

# **THE CONTRACTORS STATE LICENSE BOARD**

## **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2000 SUNSET REVIEW REPORT**

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*Four Year Overview of the Board's Regulatory Program, Board's Response to Issues and Recommendations from Prior 1996/97 Review, Background Paper for 1999 Public Hearing, Board's Response to Issue and Recommendations for 1999/2000 Sunset Review, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs*

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# **PART 1.**

## **Contractors State License Board**

### **BACKGROUND INFORMATION AND FOUR YEAR OVERVIEW OF THE CURRENT REGULATORY PROGRAM**

#### **BACKGROUND AND DESCRIPTION OF THE BOARD AND THE REGULATED PROFESSION**

##### **History of the Board and Regulation of Contractors**

The Legislature established a Contractors License Bureau in 1929, under the Department of Professional and Vocational Standards<sup>1</sup> to protect the public from irresponsible contractors. In 1935, the mission and duties of the agency were placed under the auspices of a seven member Board. From 1960 through 1975, the Board was increased to thirteen members.

The legal and regulatory role of the Board has changed over the years since the Board's creation. Initially, applicants were not issued specific license classifications. Instead, applicants simply indicated the type of construction work that would be performed under the license, and the license was issued without any examination or experience requirements.

In 1938, the Legislature made it mandatory that applicants for contractors' licenses be examined for competence in their designated fields. By 1947, the Board had been given authority to establish experience standards and to adopt rules and regulations to affect the classification of contractors "*in a manner consistent with established usage and procedure as found in the construction business, and. . . limit[ing] the field and scope of operations of a licensed contractor to those in which he or she is classified and qualified to engage. . .*"

The mission of the Contractors State License Board (CSLB) is to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. The Contractors State License Board accomplishes this by:

- Ensuring construction is performed in a safe, competent and professional manner through licensing of contractors and enforcement of the licensing laws;
- Providing resolution to disputes that arise from construction activities; and
- Educating consumers so that they may make informed choices.

CSLB serves three primary user groups:

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<sup>1</sup> The Contractors State License Board is now under the Department of Consumer Affairs.

- Consumers of contracting services;
- General public; and
- Contractors.

### **Board Composition**

The Board presently comprises thirteen members. It has a public majority with seven public members and six professional members.

The details of the Board's composition are:

- Seven members representing the public, one of whom shall be an active, local building official;
- One general engineering contractor;
- Two general building contractors;
- Two specialty contractors; and
- One member representing a building trades labor organization.

The Governor appoints eleven members of the Board. The Assembly Speaker and the Senate Rules Committee appoint one public member each.

### **Licensing Data**

The Board regulates 41 license classifications and 3 certifications under which members of the construction industry practice their trades and crafts. A license may be issued to an individual, partnership, corporation, or joint venture. All licenses must have a qualifying individual. A qualifying individual is the person listed on the CSLB records who satisfies the experience and examination requirements for a license. Depending on the type of license, the qualifying individual must be designated as an owner, responsible managing employee, responsible managing officer, or qualifying partner on the license records. A qualifying individual is required for every classification on each license issued by the CSLB. The Board also registers persons engaged in the sale of home improvement goods and services.

As of June 30, 1999, there were 280,557 licensed contractors and registered home improvement salespersons. Licenses for contractors are described within three basic branches of contracting business as defined by statute and by the rules and regulations of the Board. Those basic branches are:

- General engineering contracting (Class "A"), who build infrastructure;
- General building contracting (Class "B"), who build buildings - housing, commercial, office, etc.; and
- Specialty contracting (Class "C"), who often subcontract with As and Bs, such as painters, plumbers, electricians, etc.

Table 1 describes CSLB's licensed population over the past four years.

**Table 1 – Licensing Data**

| <b>LICENSING DATA</b>               | <b>1995-96</b>   | <b>1996-97</b>   | <b>1997-98</b>   | <b>1998-99</b>   |
|-------------------------------------|------------------|------------------|------------------|------------------|
| <b>Total Licensees</b>              | <b>276,583</b>   | <b>269,044</b>   | <b>273,566</b>   | <b>280,557</b>   |
| Active                              | 205,250          | 201,227          | 206,833          | 215,494          |
| Inactive                            | 71,333           | 67,817           | 66,733           | 65,063           |
| <b>Total Applicants</b>             | <b>26,503</b>    | <b>23,763</b>    | <b>24,450</b>    | <b>25,398</b>    |
| Exams                               | 13,878           | 12,135           | 12,610           | 12,900           |
| Waiver of Exam                      | 7,267            | 7,021            | 7,270            | 7,815            |
| Add Classification/Change Qualifier | 5,358            | 4,607            | 4,570            | 4,683            |
| <b>Applications Denied</b>          | <b>372</b>       | <b>330</b>       | <b>380</b>       | <b>271</b>       |
| <b>New Licenses Issued*</b>         | <b>16,919</b>    | <b>14,693</b>    | <b>15,361</b>    | <b>17,620</b>    |
| <b>Classifications Granted</b>      | <b>18,725</b>    | <b>16,153</b>    | <b>17,030</b>    | <b>17,689</b>    |
| General Engineering Contractor "A"  | 1,127            | 1,017            | 1,095            | 1,091            |
| General Building Contractor "B"     | 6,916            | 5,884            | 6,284            | 6,493            |
| Specialty Contractors "C"           | 10,682           | 9,252            | 9,651            | 10,105           |
| <b>Renewals Received</b>            | <b>111,550</b>   | <b>122,252</b>   | <b>116,453</b>   | <b>111,501</b>   |
| <b>Certifications</b>               | <b>776</b>       | <b>556</b>       | <b>482</b>       | <b>3,293**</b>   |
| <b>Individual Inquiries</b>         | <b>1,262,249</b> | <b>1,304,179</b> | <b>1,549,130</b> | <b>2,045,448</b> |
| Telephone                           | 1,262,249        | 1,304,179        | 1,275,912        | 1,159,518        |
| Internet                            | N/A***           | N/A              | 273,218          | 885,930          |

\* The number of new licenses issued does not match the total number of applicants less the number denied. Some applications are voided and, therefore, are not issued or denied. There are several reasons for voiding an application, including: (1) additional information is requested and the applicant fails to provide it within 90 days; (2) applicant fails the exam three times; (3) applicant fails to appear for the exam, and does not reschedule within 90 days; and (4) applicant fails to appear for the exam the second time after being rescheduled (Business and Professions Code 7074)

\*\* For FY 1998/99 the increase of certifications results from the new Home Improvement Certification program. (Business and Professions Code § 7150.2)

\*\*\* N/A: Not Applicable.

## BUDGET AND STAFF

### **Current Fee Schedule and Range**

The Contractors' Board receives no general fund support, relying solely on fees set by statute. The renewal and original application licensing fees were increased effective January 1994. Before this increase, fees had not been increased since 1982. The Board's current fee structure is as follows:

**Table 2 – Fee Schedule**

| Fee Schedule                              | Current Fee | Statutory Limit                           |
|---|-------------|---|
| Original Application (Examination)        | \$250       | \$250                                     |
| Initial License Fee                       | 150         | 150                                       |
| Additional Class                          | 50          | 50  |
| Replacing the Qualifier                   | 50          | 50  |
| Home Improvement Salesperson Registration | 50          | 50  |
| Home Improvement Renewal                  | 75          | 75  |
| Asbestos Certification Application        | 50          | 50  |
| Hazardous Substance Removal Application   | 50          | 50  |
| Active Renewal (2 year cycle)             | 300         | 300                                       |
| Inactive Renewal (4 year cycle)           | 150         | 150                                       |
| Rescheduling Fee                          | 50          | 50  |
| Delinquency Fee                           | 25          | 50% of renewal fee,<br>not to exceed \$25 |

### **Revenue and Expenditure History**

Application, license and renewal fees compose nearly all the Board's revenue. The Legislature and the Board authorized a \$100 credit against renewal and reactivation fees during fiscal years 1997-98 and 1998-99. The purpose of the credit was to diminish the Board's surplus. Anticipated FY 99/00 of about \$42.4 million are offset by projected expenditures of 42.1 million. Reserves are anticipated to be 18.4 million.

### **Expenditures by Program Component**

During FY 1998/99, the Board spent \$24.6 million on enforcement (59 percent of its total budget); \$6.7 million on licensing (16 percent of its total budget); \$3.7 million on administration, (9 percent of its total budget); \$2.1 million on examination (5 percent of its total budget); and \$1.2 million on public affairs (3 percent of its budget). Department of Consumer Affairs ProRata was \$3.3 million (8 percent of CSLB's budget).



**Table 3 – Expenditures by Program Component**

| Program         | Expenditures (In Thousands) |               |               |               | Program Share (%) |
|-----------------|-----------------------------|---------------|---------------|---------------|-------------------|
|                 | FY 95-96                    | FY 96-97      | FY 97-98      | FY 98-99      |                   |
| Enforcement     | 22,985                      | 23,640        | 24,044        | 24,583        | 59                |
| Licensing       | 6,205                       | 6,449         | 6,539         | 6,671         | 16                |
| Examinations    | 1,941                       | 2,015         | 2,055         | 2,082         | 5                 |
| Public Affairs  | 1,165                       | 1,209         | 1,233         | 1,249         | 3                 |
| Administration* | 3,494                       | 3,628         | 3,698         | 3,747         | 9                 |
| Subtotal        | 35,790                      | 36,941        | 37,569        | 38,332        | 92                |
| DCA ProRata **  | 3,032                       | 3,368         | 3,523         | 3,301         | 8                 |
| <b>TOTAL</b>    | <b>38,822</b>               | <b>40,309</b> | <b>41,092</b> | <b>41,633</b> | <b>100</b>        |

\* Administration includes executive staff, Board, support (mail, filing, cashiering), information technology and fiscal services.

\*\* Costs shown in subsequent tables exclude DCA ProRata.

### **Fund Condition**

The Board maintains an analysis of the Contractors License Fund, including reserves, revenues, transfers and expenditures. As of June 30, 2000, the Board expects a reserve of about \$18.4 million. The revenue transfers in fiscal year 1998/1999 result from repayment of a loan to Cemetery and Funeral Board and repayment of a fund transfer to the General Fund in fiscal year 1991/1992, as a result of the Malibu Video lawsuit. CSLB plans major expenditures in fiscal year 2001/2002, including an 8 percent general salary increase.

**Table 4 – Breakdown of Staff and Funds**

| Fund Category                     | Actual (In Thousands) |                 |                  |                 | Projected<br>(In Thousands) |                 |
|-----------------------------------|-----------------------|-----------------|------------------|-----------------|-----------------------------|-----------------|
|                                   | FY 95-96              | FY 96-97        | FY 97-98         | FY 98-99        | FY 99-00                    | FY 00-01        |
| <b>Number of Staff *</b>          | <b>450.1</b>          | <b>440.8</b>    | <b>447.8</b>     | <b>464.2</b>    | <b>466.6</b>                | <b>466.6</b>    |
| <b>Beginning Adjusted Reserve</b> | <b>\$16,836</b>       | <b>\$15,355</b> | <b>\$ 19,754</b> | <b>\$10,597</b> | <b>\$18,167</b>             | <b>\$18,353</b> |
| <b>Revenue</b>                    |                       |                 |                  |                 |                             |                 |
| License Fee                       | 9,451                 | 8,606           | 8,641            | 8,826           | 9,296                       | 9,050           |
| Renewal Fee                       | 27,409                | 30,721          | 30,213           | 31,839          | 29,785                      | 32,030          |
| Renewal Refund                    | -                     | -               | (10,071)         | (10,613)        | -                           | -               |
| Delinquent Fee                    | 373                   | 385             | 439              | 364             | 406                         | 437             |
| Interest                          | 549                   | 740             | 658              | 882             | 945                         | 945             |
| Miscellaneous                     | 79                    | 78              | 64               | 50              | 45                          | 70              |
| Penalties                         | 801                   | 996             | 906              | 955             | 898                         | 898             |
| <b>Total Revenue</b>              | <b>38,662</b>         | <b>41,526</b>   | <b>30,850</b>    | <b>32,303</b>   | <b>41,375</b>               | <b>43,430</b>   |
| Transfers **                      | (1,854)               | 2,554           | 1,085            | 16,900          | 975                         | 975             |
| <b>Total Resources</b>            | <b>53,644</b>         | <b>59,435</b>   | <b>51,689</b>    | <b>59,800</b>   | <b>60,517</b>               | <b>62,758</b>   |
| <b>Expenditures</b>               |                       |                 |                  |                 |                             |                 |
| Personnel Services                | 21,499                | 21,336          | 21,713           | 21,121          | 22,306                      | 22,306          |
| Operating Expenses                | 13,057                | 14,346          | 14,999           | 16,006          | 15,383                      | 15,383          |
| TOTAL PS & OE                     | 34,556                | 35,682          | 36,712           | 37,127          | 37,689                      | 37,689          |
| Statewide ProRata                 | 892                   | 917             | 480              | 822             | 822                         | 822             |
| DCA ProRata                       | 3,032                 | 3,368           | 3,523            | 3,301           | 3,400                       | 3,400           |
| Reimbursements                    | 342                   | 342             | 377              | 383             | 253                         | 253             |
| <b>Total Expenditures</b>         | <b>38,822</b>         | <b>40,309</b>   | <b>41,092</b>    | <b>41,633</b>   | <b>42,164</b>               | <b>42,164</b>   |
| <b>Ending Reserve</b>             | <b>14,822</b>         | <b>19,126</b>   | <b>10,597</b>    | <b>18,167</b>   | <b>18,353</b>               | <b>20,594</b>   |
| <b>Months in Reserve</b>          | <b>4.6</b>            | <b>5.7</b>      | <b>3.1</b>       | <b>5.2</b>      | <b>5.2</b>                  | <b>5.9</b>      |

\* The number of staff is lower than the number of authorized staff because of vacancies.

\*\* See page 5 – Fund Condition for explanation of recent transfers

## **LICENSURE REQUIREMENTS**

### **Scope of the Profession**

All businesses and individuals who construct, offer to construct, or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the Board if the total cost (labor and materials) of one or more contracts on the project is \$500 or more. Contractors, including subcontractors, specialty contractors, and persons engaged in the business of home improvement, must be licensed before submitting bids.

The CSLB Licensing Division assures contractors' qualification by reviewing their work experience as part of processing new applications for licensure and additional license classifications. The Division also maintains license records, including renewals, contractor's license bonds and workers' compensation insurance policies.

### **Exemptions to Licensure**

Under the statutes, the definition of the term "contractor" and the relevant scope of work subject to licensure are very broad. Exemptions are limited. The following situations represent nearly all of the exemptions to the CSLB licensing requirements:

- Construction-related improvements under \$500 in value for all labor and materials.
- Employees of licensees whose sole compensation is salary and wages.
- Public personnel working on public projects as employees of the public entity.
- Oil and gas operations performed by an owner or lessee.
- Owner-builders who improve their principal place of residence under conditions that are specified in the Contractors License Law.
- Sellers or installers of products which do not become a fixed part of the structure.
- Security alarm company operators and those who install satellite antenna systems. (Regulated by other agencies.)
- Architects, engineers, geologists, structural pest control operators. (Regulated by other agencies.)

### **Financial Solvency, Insurance and Bonding Requirements for Licensure**

Applicants for licensure must certify to having more than \$2,500 in operating capital. Applicants must also provide proof of workers' compensation insurance, or sign a form that certifies that he/she is exempt from the workers' compensation insurance requirements. In addition, applicants must submit a contractor's bond or cash deposit in the amount of \$7,500. An additional \$7,500 bond is required for each Responsible Managing Employee, or Responsible Managing Officer (RMO). (If, however, the RMO owns 10 percent or more of the voting stock, the additional bond is not required.)

## **Education, Experience and Examination Requirements**

An applicant for licensure must be at least 18 years of age. The person who is acting as the qualifier for the license must have, within the last ten years, at least four years of journey level work experience in the trade for which the license application is submitted. Technical training, completion of an approved apprenticeship program, or a construction-related college or university education can be substituted for not more than three years of the experience requirement. Unless a waiver is applicable, the qualifier must successfully complete an examination process consisting of two parts: (1) a relevant trade test, and (2) a “Law and Business” test. All candidates must complete the open book examination entitled: “*Asbestos: A Contractor’s Guide and Open Book Examination.*”<sup>2</sup>

## **Waiver of Exams**

The Contractors License Law authorizes the Registrar to waive the exam process (both the general business law examination and the appropriate trade examination) under the conditions outlined below:

- Within the five-year period preceding application, the qualifying individual has either passed the relevant exam or has been the qualifier on another license holding the classification for which the application was submitted. (B&P Code §7065)
- For five years of the seven-year period preceding application, the qualifying individual has been associated with a license that is active and in good standing, and meets one of the following conditions: (B&P Code § 7065.1)
  - 1) The qualifying individual has been listed on the CSLB license records as an owner, partner or corporate officer, and is applying for the same trade classification(s) currently held on said license record.
  - 2) Although not listed on the personnel of record, the qualifying individual has been continuously employed in a supervisory capacity by a corporate licensee, and the corporation is applying to replace its qualifier in the same classification for which the employee has provided supervision.
  - 3) The qualifying individual is a family member who has been actively engaged in a licensee’s existing family business and licensure of said person is required in order to continue the family business.

## **Examinations**

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<sup>2</sup> The asbestos open book exam is a short booklet used to educate applicants with regard to the hazards of handling asbestos. This awareness exam differs from the Asbestos Certification exam that permits licensees to contract for asbestos abatement. The latter is a necessary prerequisite for asbestos removal.

Examinations are administered daily at eight testing centers throughout the state by means of a computerized system, called computer assisted testing (CAT). There are currently 45 examinations being administered: 41 trade, 3 certification, and the Law and Business exam.

Table 5 shows the passing rates for each examination, averaged over the last three years. The average passing rates range from 23 percent to 90 percent. The wide range is due in part to examination questions that are outdated and/or overexposed.

The Board has obtained the necessary resources to revise all of its examinations over the next five years. The revision schedule is based on the priority recommendations in the report by Cooperative Personnel Services. As the examinations are revised and new test questions are created, the passing rates are expected to fall within a narrower range.

In order to revise an examination, an occupational analysis must be performed. Information will be gathered from current licensees to determine the critical tasks and knowledge required for safe and competent job performance, in so-called content areas. The results of the occupational analyses will indicate the content areas to be covered on the examinations, and the weight to be given each content area. Following the occupational analyses, testing specialists will work with current licensees in each trade to develop new examination questions and to revise outdated questions.

**Table 5 – Status of Examinations**

| <b>Examination Classification</b> | <b>Average Number Admin*</b> | <b>Current Passing Score</b> | <b>Average Passing Rate*</b> | <b>Occupational Analysis Developer**</b> | <b>Date of Last Occupational Analysis</b> | <b>Date of Last Exam Revision</b> | <b>Date of Next Exam Revision</b> |
|-----------------------------------|------------------------------|------------------------------|------------------------------|--|---|-----------------------------------|-----------------------------------|
| Law and Business                  | 15,301                       | 68%                          | 73%                          | CSLB                                     | 1993                                      | 1994                              | 2001                              |
| Asbestos Certification            | 157                          | 62%                          | 59%                          | HRA                                      | 1986                                      | 1996                              | 2001                              |
| Hazardous Certification           | 248                          | 60%                          | 66%                          | HRA                                      | 1992                                      | 1993                              | 2002                              |
| A (General Engineering)           | 881                          | 68%                          | 85%                          | CSLB                                     | 1998                                      | 1998                              | 1999                              |
| B (General Building)              | 6,279                        | 72%                          | 69%                          | CSLB                                     | 1994                                      | 1995                              | 2001                              |
| C-2 (Insulation & Acoustical)     | 57                           | 60%                          | 49%                          | HRA                                      | 1986                                      | 1992                              | 2001                              |
| C-4 (Boiler, Hot Water)           | 50                           | 62%                          | 62%                          | HRA                                      | 1986                                      | 1992                              | 2002                              |
| C-5 (Carpentry)                   | 123                          | 75%                          | 23%                          | CPS                                      | 1999                                      | 1999                              | 2000                              |
| C-6 (Cabinet & Mill Work)         | 307                          | 67%                          | 62%                          | DCA                                      | 1992                                      | 1999                              | ***                               |
| C-7 (Low Voltage)                 | 509                          | 72%                          | 53%                          | PSI                                      | 1990                                      | 1992                              | 2001                              |
| C-8 (Concrete)                    | 345                          | 60%                          | 77%                          | PSI                                      | 1986                                      | 1994                              | 2002                              |
| C-9 (Drywall)                     | 334                          | 65%                          | 32%                          | HRA                                      | 1985                                      | 1994                              | 2001                              |
| C-10 (Electrical)                 | 1207                         | 64%                          | 84%                          | PSI                                      | 1986                                      | 1993                              | 2001                              |
| C-11 (Elevator)                   | 39                           | 72%                          | 85%                          | CSLB                                     | 1998                                      | 1998                              | 2000                              |
| C-12 (Earthwork & Paving)         | 174                          | 61%                          | 45%                          | HRA                                      | 1992                                      | 1993                              | 2001                              |
| C-13 (Fencing)                    | 168                          | 63%                          | 41%                          | HRA                                      | 1985                                      | 1993                              | 2002                              |
| C-14 (Metal Roof)                 | 14                           | 61%                          | 60%                          | HRA                                      | 1988                                      | 1999                              | ***                               |
| C-15 (Flooring)                   | 89                           | 63%                          | 40%                          | PSI                                      | 1986                                      | 1996                              | 2004                              |
| C-16 (Fire Protection)            | 141                          | 60%                          | 47%                          | CSLB                                     | 1991                                      | 1996                              | 2002                              |
| C-17 (Glazing)                    | 223                          | 63%                          | 58%                          | PSI                                      | 1992                                      | 1993                              | 2002                              |
| C-20 (Heat, Vent, AC)             | 756                          | 74%                          | 65%                          | PSI                                      | 1986                                      | 1994                              | 2001                              |
| C-21 (Bldg, Moving & Demo)        | 80                           | 60%                          | 68%                          | PSI                                      | 1985                                      | 1986                              | 2001                              |
| C-23 (Ornamental Metals)          | 68                           | 61%                          | 62%                          | HRA                                      | 1986                                      | 1993                              | 2003                              |
| C-26 (Lathing)                    | 13                           | 64%                          | 27%                          | HRA                                      | 1985                                      | 1999                              | ***                               |
| C-27 (Landscaping)                | 1331                         | 66%                          | 38%                          | CSLB                                     | 1991                                      | 1993                              | 2001                              |

\* Average of last three fiscal years    \*\* CPS = Cooperative Personnel Services; DCA = Department of Consumer Affairs; HRA = Hoffmann Research Associates.; PSI = Psychological Services, Inc.    \*\*\* Merged with another classification

**STATUS OF EXAMINATIONS (continued)**

| Examination Classification   | Average Number Admin* | Current Passing Score | Average Passing Rate* | Occupational Analysis Developer** | Date of Last Occupational Analysis | Date of Last Exam Revision | Date of Next Exam Revision |
|------------------------------|-----------------------|-----------------------|-----------------------|-----------------------------------|------------------------------------|----------------------------|----------------------------|
| C-28 (Lock & Security Equip) | 75                    | 71%                   | 34%                   | CSLB                              | 1995                               | 1996                       | 2004                       |
| C-29 (Masonry)               | 309                   | 60%                   | 28%                   | CSLB                              | 1993                               | 1996                       | 2002                       |
| C-32 (Parking & Highway)     | 65                    | 60%                   | 28%                   | CSLB                              | 1992                               | 1993                       | 2003                       |
| C-33 (Painting & Decorating) | 1692                  | 70%                   | 71%                   | PSI                               | 1986                               | 1993                       | 2001                       |
| C-34 (Pipeline)              | 29                    | 60%                   | 26%                   | HRA                               | 1986                               | 1993                       | 2003                       |
| C-35 (Plastering)            | 168                   | 60%                   | 42%                   | CPS                               | 1999                               | 1999                       | 2000                       |
| C-36 (Plumbing)              | 774                   | 66%                   | 77%                   | PSI                               | 1986                               | 1986                       | 2001                       |
| C-38 (Refrigeration)         | 137                   | 72%                   | 68%                   | PSI                               | 1985                               | 1994                       | 2002                       |
| C-39 (Roofing)               | 752                   | 70%                   | 55%                   | PSI                               | 1986                               | 1996                       | 2001                       |
| C-42 (Sanitation Systems)    | 43                    | 62%                   | 43%                   | HRS                               | 1985                               | 1992                       | 2003                       |
| C-43 (Sheet Metal)           | 108                   | 52%                   | 53%                   | CPS                               | 1999                               | 1999                       | 2000                       |
| C-45 (Electrical Signs)      | 67                    | 72%                   | 71%                   | CSLB                              | 1985                               | 1986                       | 2002                       |
| C-46 (Solar)                 | 10                    | 64%                   | 80%                   | PSI                               | 1986                               | 1988                       | 2003                       |
| C-47 (Gen Manuf Housing)     | 44                    | 62%                   | 64%                   | PSI                               | 1985                               | 1988                       | 2003                       |
| C-50 (Reinforcing Steel)     | 25                    | 61%                   | 43%                   | HRA                               | 1986                               | 1987                       | 2003                       |
| C-51 (Structural Steel)      | 91                    | 73%                   | 68%                   | CPS                               | 1999                               | 1999                       | 2000                       |
| C-53 (Swimming Pool)         | 126                   | 67%                   | 73%                   | PSI                               | 1990                               | 1996                       | 1999                       |
| C-54 (Tile)                  | 371                   | 60%                   | 75%                   | HRA                               | 1985                               | 1992                       | 2001                       |
| C-55 (Water Conditioning)    | 29                    | 72%                   | 70%                   | CSLB                              | 1986                               | 1986                       | 2002                       |
| C-57 (Well Drilling)         | 162                   | 69%                   | 48%                   | CSLB                              | 1986                               | 1990                       | 2002                       |
| C-60 (Welding)               | 113                   | 66%                   | 51%                   | HRA                               | 1985                               | 1986                       | 2003                       |
| C-61 (Limited Specialty)     | 978                   | 72%                   | 90%                   | CSLB                              | 1986                               | 1995                       | 2002                       |

\* Average of last three fiscal years \*\* CPS = Cooperative Personnel Services; DCA = Department of Consumer Affairs; HRA = Hoffmann Research Association.; PSI = Psychological Services, Inc.

### **Time Frame for Licensing**

Given a complete application, with complete and accurate documents and fees, the estimated time for obtaining a license through the examination process is 8 to 9 weeks (4 weeks in application processing; 4 to 5 weeks for examination process). Under the same circumstances, the estimated time for obtaining a license through the examination waiver process is 2.5 weeks.

**Table 6 – Average Days to Receive License (Original Applications)**

| <b>Applications</b>                      | <b>FY 95-96</b> | <b>FY 96-97</b> | <b>FY 97-98</b> | <b>FY 98-99</b> |
|--|-----------------|-----------------|-----------------|-----------------|
| <b>Examination Applications</b>          |                 |                 |                 |                 |
| Application to Examination               | 64              | 60              | 72              | 76              |
| Examination to Issuance                  | 47              | 49              | 48              | 49              |
| Total Average Days                       | 111             | 109             | 120             | 125             |
| <b>Waiver Applications</b>               |                 |                 |                 |                 |
| Received date to First Reject            | N/A*            | 40              | 38              | 38              |
| Last Reject or Received Date to Issuance | N/A             | 51              | 52              | 57              |
| Total Average Days                       |                 | 91              | 90              | 95              |

\* N/A – Not Available

The processing time for applications includes the time that it takes the applicant to provide the required information needed to complete the application or to make corrections. It also includes the amount of time the applicant takes to send in the requisite bonds, workers' compensation insurance documents, and appropriate fees.

### **Continuing Education/Competency Requirements**

There is no requirement that contractors participate in continuing education as a condition of license renewal. However, the Board has worked on educating contractors through:

- The Board's quarterly newsletter. It includes educational articles;
- Offering contractor forums in partnership with institutions of higher education and California Building Officials (CALBO) throughout the state on issues such as home improvement contracting, contractor law, licensing issues and building codes;
- Joint ventures with professional associations to identify and publicize course work related to seismic retrofitting of buildings; and
- Requiring licensees to take continuing education as a part of a disciplinary action.

### **Reciprocity with Other States**

Business and Professions Code § 7065.4 authorizes the Board to enter into reciprocal agreements with other states for the mutual acceptance of trade qualifications. The Board currently has reciprocal agreements with Arizona, Nevada and Utah. Under these agreements, applicants are required to pass the Business and Law exam administered by each state, but the relevant trade examination for each state will be waived, provided the applicant's contractor's license in the reciprocal state has been in good standing for the previous five years.

The CSLB is an active member of the National Association of State Contractors Licensing Agencies (NASCLA). Effective January of 1999, NASCLA's disciplinary databank went on-line, providing current information on contractors who have been disciplined by one or more of the member states.



## **ENFORCEMENT ACTIVITY**

### **Enforcement Program Overview**

The Contractors State License Board receives complaints from members of the public concerning all phases of the construction industry. The majority of the complaints, however, are from owners of residential construction involved in remodeling or repair work. In FY 1998/99, the CSLB received over 26,000 complaints.

Historically, the Board's complaint processing functions were handled in fifteen district offices within three regional areas. The entire process, including complaint initiation, investigation, dispute resolution and legal action, was handled separately by each district and region. A 1997 Price Waterhouse study revealed significant inconsistencies within the complaint handling process in the areas of district and staff workload, training and legal action referrals. Unevenness in staffing levels and district workloads served to drive up cycle times. Different approaches to dispute resolution, adjudication and legal actions reduced consistency in the treatment and outcomes for consumers and contractors.

Responding to the Price Waterhouse study, the CSLB has begun a reengineering project for field operations. The reengineering pilot project has been implemented in southern California (Los Angeles, Orange, Riverside and San Bernardino counties). The new program channels all incoming complaints to one location where they are evaluated for appropriate assignment. This process eliminates the problem of fluctuating workload and personnel staffing in local districts decreasing processing times. One anticipated result is shorter times to final complaint resolution.

In the pilot program, when a complaint is received in the Intake and Mediation Center (IMC), it is immediately entered into the CSLB computer database for tracking purposes. Data are available to all enforcement employees, regardless of location, and can be used to assess a licensee's record when determining initial assignment of a pending investigation. The new complaint is subject to "triage" by the IMC staff. Triage reviews the contractor's license status; previous complaints and disciplinary actions. It also examines complaints to determine the seriousness of the allegations, whether the file is ready for investigation, and if the complaint falls within CSLB's jurisdiction. If appropriate, the complaint is assigned to a Consumer Services Representative (CSR) for mediation and attempted resolution.

Complaints involving serious allegations of fraud, prior disciplinary actions or involving contractors with multiple complaints are sent directly to the field for investigation without going through the mediation process. This allows for more effective action against contractors involved in illegal activity, such as financial victimization of elderly citizens. The centralization of the intake process also allows multiple complaints against the same contractor, no matter where they originate, to be assigned to the same investigator(s) for focused regulatory action. Under the new pilot, investigators are being outfitted with necessary equipment, such as laptop computers and cellular phones, to enable them to operate from anywhere in the state, rather than being assigned to one office with arbitrary geographical boundaries.

In January 2000, the Board will review the results of the pilot program and consider full implementation of the new procedures throughout the state.

Also in response to the 1997 study, but separate from the pilot, the CSLB has also eliminated its Northern/Southern geographical regions and implemented a management structure of statewide functions. This new structure will provide consistent enforcement of contractor's license law throughout the state. We have now replaced regional and district supervisors with statewide managers for investigation, fraud, underground economy and legal actions. Statewide management results in greater consistency and higher quality.

Under the statewide management structure, the enforcement program has also formed a unit which has oversight of training, the industry expert program and personnel actions. An ongoing statewide training program for all staff has been implemented and standard training will be given to all new personnel. In addition, ongoing training programs are held for industry experts hired by the CSLB to provide project inspections and reports. All of these classes are held in conjunction with staff from the Attorney General's office to ensure that the training will result in solid investigations and effective legal actions.

The CSLB continues to give the eradication of illegal, unlicensed contractors a very high priority. Those individuals cause a disproportionate amount of damage to the public because they act without obtaining permits, often demand cash for payment and are difficult, if not impossible to trace when inevitable problems occur. As part of this enforcement activity, several geographical areas were targeted by concentrating enforcement staff on stings and sweeps. Stings and sweeps are usually done in partnership with local media. Such exposure helps educate consumers on the dangers of hiring unlicensed contractors, and encourages the unlicensed to become licensed.

We have measured unlicensed activity levels before and after the stings to assess their effectiveness. The results showed that the number of advertisements by unlicensed individuals declined significantly in the months following these actions. In fact, over the last few years the number of reactive complaints against non-licensees has declined in direct proportion to the proactive work done by the enforcement program.

**Table 7 – Complaint Data**

|   | <b>FY 95-96</b> | <b>%</b>   | <b>FY 96-97</b> | <b>%</b>   | <b>FY 97-98</b> | <b>%</b>   | <b>FY 98-99</b> | <b>%</b>   |
|---|-----------------|------------|-----------------|------------|-----------------|------------|-----------------|------------|
| <b>Complaints Filed (By Source)*</b>                        | <b>30,806</b>   | <b>100</b> | <b>30,967</b>   | <b>100</b> | <b>31,863</b>   | <b>100</b> | <b>26,076</b>   | <b>100</b> |
| Public  | 21,960          | 71         | 20,892          | 67         | 20,691          | 65         | 17,802          | 68         |
| Trade/Professional  | 2,274           | 7          | 1,951           | 6          | 1,828           | 6          | 1,163           | 4          |
| State/Local Agencies  | 127             | <1         | 105             | <1         | 100             | <1         | 71              | <1         |
| Initiated by Board  | 6,445           | 21         | 8,019           | 26         | 9,244           | 29         | 7,040           | 27         |
| <b>Complaints Filed (By Type)**</b>                         | <b>32,856</b>   | <b>100</b> | <b>32,800</b>   | <b>100</b> | <b>32,582</b>   | <b>100</b> | <b>27,320</b>   | <b>100</b> |
| Workmanship/Abandonment                                     | 10,921          | 33         | 10,184          | 31         | 9,873           | 30         | 9,515           | 35         |
| Non-Licensee  | 8,661           | 26         | 9,481           | 29         | 10,471          | 32         | 8,108           | 30         |
| Other (contract disputes, etc)                              | 13,274          | 40         | 13,135          | 40         | 12,238          | 38         | 9,697           | 35         |
| <b>Closures through Mediation***<br/>(No Investigation)</b> | <b>13,244</b>   | <b>43</b>  | <b>12,864</b>   | <b>42</b>  | <b>12,273</b>   | <b>39</b>  | <b>11,521</b>   | <b>44</b>  |
| <b>Referred to Investigation</b>                            | <b>17,759</b>   | <b>58</b>  | <b>17,581</b>   | <b>57</b>  | <b>18,212</b>   | <b>57</b>  | <b>14,666</b>   | <b>56</b>  |

\* Complaints by source taken from files opened

\*\* Complaints by type taken from files closed

\*\*\* Mediation and Investigation totals refer to different time periods and may total more or less than 100%.

### **Disciplinary Actions**

In FY 1998/99, approximately 29 percent of the complaints referred to investigation resulted in a formal disciplinary action. Another 6 percent were referred to the CSLB's arbitration program.

When violations of the Business and Professions Code are substantiated, the CSLB has several options for legal action: accusations, licensee citations, nonlicensee citations, or referrals to a District Attorney for criminal prosecution. Legal actions resulted in a total of 791 revocations and 791 suspensions, including those cases where the licensee has not complied with an arbitration award. By operation of law, those licenses are suspended and, if there is no compliance within a year, revoked.

**Table 8 – Investigation Activity**

| <b>Investigation Activity</b>    | <b>FY 95-96</b> | <b>FY 96-97</b> | <b>FY 97-98</b> | <b>FY 98-99</b> |
|----------------------------------|-----------------|-----------------|-----------------|-----------------|
| <b>Investigations Opened</b>     | <b>17,759</b>   | <b>17,581</b>   | <b>18,212</b>   | <b>14,666</b>   |
| <b>Disciplinary Action Taken</b> | <b>5513</b>     | <b>5723</b>     | <b>4475</b>     | <b>4252</b>     |
| Accusations *                    | 558             | 378             | 447             | 489             |
| Refer to District Attorney       | 845             | 664             | 1034            | 1,083           |
| Citations – Licensed             | 1935            | 2290            | 1352            | 990             |
| Citations – Non-Licensed         | 2175            | 2391            | 1642            | 1,690           |

\* The number of complaints referred to accusation; multiple complaints against the same contractor are combined into one accusation.

## **Arbitration Program**

The CSLB offers formal arbitration to homeowners with complaints that meet certain criteria (the contractor has no prior disciplinary action, a good complaint record, and a current and active license). The Board contracts with a private arbitration firm, currently Arbitration Works International, to hear cases that fit the program. Mandatory arbitration is offered to consumers whose estimated financial injury equals \$5,000 or less. If the homeowner agrees to the arbitration, it is mandatory for the contractor to participate.

The Voluntary Arbitration Program covers consumers with an estimated financial injury of \$5,001 to \$50,000 (this cap was recently raised from a \$25,000 limit). In the Voluntary Arbitration Program, both parties must agree to arbitration. When an arbitration award is made, the contractor has a fixed amount of time to comply. If the contractor does not comply with the arbitration award, the CSLB suspends the license, which bars the contractor from undertaking any new work. After a year, by operation of law, the license is permanently revoked.

**Table 9 – Other Compliance Actions**

| Other Compliance Actions        | FY 95-96     | FY 96-97     | FY 97-98     | FY 98-99     |
|---------------------------------|--------------|--------------|--------------|--------------|
| <b>Other Compliance Actions</b> | <b>5,467</b> | <b>5,774</b> | <b>5,238</b> | <b>6,896</b> |
| Warning Letters                 | 2,094        | 2,076        | 2,409        | 4,047        |
| Arbitration                     | 1,117        | 967          | 962          | 892          |
| Suspensions (non-compliance)    | 196          | 231          | 156          | 172          |
| Revocations (non-compliance)    | 68           | 93           | 93           | 54           |

## **Citations**

The CSLB has the authority to issue citations for violations of the Business and Professions Code. The typical citation imposes a fine for the violations and contains correction order. A correction order may require the contractor to return to the job or pay financial restitution (usually the cost of completion of the contract) to the project owner.

Citations are issued by CSLB legal action staff and are only referred to the AG if the contractor requests an appeal hearing. Once appealed, the citation is heard by an Administrative Law Judge (ALJ). The ALJ can uphold, modify or reject the citation. ALJ decisions next go to the Registrar for adoption. Under Business and Professions Code § 7090.1, the Board has the authority to suspend the contractor's license if there is noncompliance with the correction order and/or fine. After one year of suspension, if still not in compliance, the license is revoked by operation of law. If the license is revoked, other licenses with the same qualifying personnel are also revoked.

The CSLB also can issue administrative citations for unlicensed activity. This is done when there is insufficient evidence to support a criminal violation.

**Table 10 - Citations**

| Citations                          | FY 95-96 | FY 96-97 | FY 97-98 | FY 98-99 |
|------------------------------------|----------|----------|----------|----------|
| Total Licensed Citations Issued    | 1,362    | 1,443    | 1,226    | 990      |
| Complied with                      | 704      | 876      | 613      | 308      |
| Noncompliance Actions *            |          |          |          |          |
| Suspensions                        | 994      | 1028     | 917      | 616      |
| Revocations                        | 733      | 646      | 699      | 555      |
| Total Nonlicensed Citations Issued | 2,027    | 2,080    | 1,438    | 1,690    |
| Complied with                      | 558      | 603      | 536      | 341      |

\* Noncompliance and Complied with totals do not match Citations Issued totals because they occur in separate fiscal years.

### **Accusations**

If an investigation substantiates violations of law, the matter may be referred for accusation to the Office of the Attorney General. This referral is made if there has been a prior citation, multiple complaints or fraudulent activity. As was the case for citations, the contractor may appeal an accusation. If appealed, the matter is referred to the Office of Administrative Hearings and heard before an Administrative Law Judge who renders a Proposed Decision. This decision is reviewed by the Registrar for adoption. If adopted, the decision becomes a Final Order and enforced against the license.

The enforcement program has also implemented use of the Interim Suspension Order (ISO) for those contractors whose activities constitute an immediate threat to the health and welfare of the public. ISOs require extensive coordination between the CSLB and AG in order to meet the stringent timelines. One recent ISO involved a company in which the wife of a revoked licensee had obtained a new license so that her husband could continue his fraudulent business practices. As soon as complaints were received against the new license, enforcement staff moved to obtain an ISO and ultimately revoked the license.

As part of the Statewide Management function, the enforcement staff has been working closely with the Office of the Attorney General to provide consistent guidelines and training on all phases of the legal action process from investigation through prosecution. Guidelines are currently being developed by staff from both agencies to provide clear direction on such issues as the parameters for determining whether a case should be filed as a citation or accusation.

**Table 11 – Referrals to Attorney General**

| Referred to AG's Office | FY 95-96 | FY 96-97 | FY 97-98 | FY 98-99 |
|-------------------------|----------|----------|----------|----------|
| Accusations Filed *     | 348      | 246      | 199      | 213      |
| Withdrawn/Dismissed     | 41       | 20       | 18       | 12       |
| Stipulated Settlements  | 49       | 66       | 61       | 140      |
| License Revocation      | 239      | 269      | 235      | 182      |
| License Suspension      | 2        | 4        | 6        | 3        |

\* Number is less than accusations referred because multiple complaints can be combined into one accusation.

### **Referrals to District Attorney**

The enforcement staff works closely with the District Attorney (DA) in many counties. The majority of investigations referred to the DA involve either unlicensed activity which resulted in financial damage to a homeowner, or cases in which the contractor has ignored administrative citations and continued to operate illegally.

The Board also works with DA's to obtain civil injunctions against contractors. Those actions parallel the disciplinary actions taken against the license. In two major cases last year, a Deputy Attorney General appeared in criminal cases to successfully petition the Superior Court Judge to suspend the license, pending the outcome of the criminal cases.

**Table 12 – Criminal and Civil Actions**

| Criminal and Civil Actions Filed | FY 95-96   | FY 96-97   | FY 97-98     | FY 98-99     |
|----------------------------------|------------|------------|--------------|--------------|
| <b>Criminal or Civil Filed</b>   | <b>845</b> | <b>664</b> | <b>1,034</b> | <b>1,083</b> |
| Nonlicensed                      | 724        | 602        | 1,014        | 1,024        |
| Licensed                         | 121        | 62         | 20           | 59           |

**Table 13 – Average Cost for Disciplinary Cases (In Whole Dollars)\***

|   | FY 95-96        | FY 96-97        | FY 97-98        | FY 98-99        |
|---|-----------------|-----------------|-----------------|-----------------|
| <b>Average Cost Per Case Investigated**</b>                                   |                 |                 |                 |                 |
| Enforcement Budget  | \$18,534,000    | \$18,261,000    | \$19,061,000    | \$19,702,000    |
| Use of Industry Expert Witness  | \$1,258,000     | \$1,200,000     | \$1,111,000     | \$1,124,000     |
| Number of Cases Closed  | 32,877          | 32,800          | 32,582          | 27,320          |
| Average Cost Per Case in Whole Dollars  | \$602           | \$593           | \$619           | \$762           |
| <b>Average Additional Cost Per Case Referred to Attorney General</b>          |                 |                 |                 |                 |
| Cost of Attorney General  | \$3,386,000     | \$3,189,000     | \$2,913,000     | \$2,993,000     |
| Office of Administrative Hearings   | \$807,000       | \$989,000       | \$959,000       | \$764,000       |
| Number of Cases Closed  | 296             | 314             | 296             | 215             |
| Average Cost Per AG Case in Whole Dollars                                     | \$14,166        | \$13,306        | \$13,081        | \$17,474        |
| <b>Average Cost Per Disciplinary Case (Case Investigation Cost + AG Cost)</b> | <b>\$14,768</b> | <b>\$13,899</b> | <b>\$13,700</b> | <b>\$18,237</b> |

\* All costs are exclusive of ProRata

\*\* Includes investigations referred for accusation as well as citations in which the licensee has requested an appeal hearing.

## **Restitution**

Restitution is made to the consumer under the following circumstances:

- Mediation process: Most complaints go to mediation. It is there that the licensee and complainant may agree to finish the job, correct the poor workmanship, or pay the complainant the cost to complete or correct the job.
- Arbitration: If arbitration is ordered or agreed to, then restitution may be ordered.
- Citation: If a citation, is issued the licensee may be ordered to correct the work or pay the consumer the costs to complete or correct the job.
- Accusation: If an accusation is filed, the Administrative Law Judge's decision usually orders restitution to the consumer.
- Unlicensed contractor applies for license: If a financial injury is caused by an unlicensed person, the person's name goes into the CSLB's computer records. Any attempt by the unlicensed contractor to become licensed will require resolution of the financial injury.
- Civil judgment: If there is a construction-related civil judgment against the license, the licensee must pay the judgment or post a bond in the amount of the judgment.
- Surety bonds: If there is a violation of the license law, then a claim can be paid by the surety company.

As shown below, in FY 1998/1999, a total restitution amount of \$28,638,000 was received. The accusation and citation amounts were obtained by CSLB as the result of formal disciplinary actions. The arbitration amount represents the total of monetary awards made through the Mandatory and Voluntary Arbitration Programs as previously described. The licensing program through enforcement of Business and Professions Code § 7071.17 obtained the Civil Judgement restitution. This law allows for an automatic suspension of the license for any unpaid civil judgment against a licensee. The suspension can only be lifted if the judgment is satisfied or if a judgment bond is posted. Business and Professions Code § 7071.11 requires the surety companies to report to the CSLB if there is a bond payout.

The following tables provide restitution dollar amounts for the past four years:

**Table 14 – Restitution Received by Consumer (In Thousands)**

| <b>Restitution to Consumer</b> | <b>FY 95-96</b> | <b>FY 96-97</b> | <b>FY 97-98</b> | <b>FY 98-99</b> |
|--------------------------------|-----------------|-----------------|-----------------|-----------------|
| Accusations                    | 165             | 117             | 388             | 364             |
| Citations                      | 373             | 701             | 585             | 957             |
| Arbitration                    | 1,490           | 1,656           | 1,665           | 1,844           |
| Mediation                      | 11,436          | 9,776           | 13,115          | 8,554           |
| Civil Judgments                | 11,112          | 9,861           | 14,895          | 12,159          |
| Surety Bonds                   | 5,335           | 5,720           | 5,123           | 4,760           |
| <b>Total Restitution</b>       | <b>29,911</b>   | <b>27,831</b>   | <b>35,771</b>   | <b>28,638</b>   |

**Complaint Aging**

In FY 1998/99, the median age of pending complaints increased somewhat compared to the two prior years. 84 percent of the complaints were closed within a six-month time frame. The recent reengineering of field operations and the Statewide Management structure described earlier were designed, in part, to speed case processing without sacrificing quality or increasing costs. While early data are incomplete, they suggest faster processing times.

**Table 15 – Complaint Aging Data**

| <b>Complaint Aging Data</b>                                     | <b>FY 95-96</b> | <b>FY 96-97</b> | <b>FY 97-98</b> | <b>FY 98-99</b> |
|---|-----------------|-----------------|-----------------|-----------------|
| <b>Median Age of Pending Complaint Investigated Cases</b>       |                 |                 |                 |                 |
| Median Age in Days  | 60              | 47              | 43              | 54              |
| <b>Aging of Completed Complaint Investigation Cases at CSLB</b> |                 |                 |                 |                 |
| 1-90 days   | 61%             | 66%             | 70%             | 64%             |
| 91-180 days   | 20%             | 19%             | 18%             | 20%             |
| 181 days -1 Year  | 17%             | 13%             | 11%             | 15%             |
| 1 Year +  | 2%              | 2%              | 1%              | 1%              |
| <b>Aging of Cases Pending in Attorney General's Office</b>      |                 |                 |                 |                 |
| 0-180 Days  | 50%             | 50%             | 57%             | 54%             |
| 181 Days - 1 Year   | 27%             | 27%             | 28%             | 26%             |
| 1 + Years   | 23%             | 23%             | 15%             | 20%             |

**Enforcement Satisfaction**

The CSLB has been conducting a consumer satisfaction survey to monitor the effectiveness of its activities since 1993. The questionnaire used by CSLB is similar to the one the JLSRC directed all boards and committees under review to conduct. The 1998 data comes from over 2,000 responses to a survey sent to 4,816 consumers who used CSLB's services.



**Table 16 – Consumer Satisfaction Survey Results**

| <b>CONSUMER SATISFACTION SURVEY FOR CONTRACTORS BOARD</b>  |                                   |             |             |             |
|--|-----------------------------------|-------------|-------------|-------------|
| <b>Questions</b>   | <b>Responses by Calendar Year</b> |             |             |             |
|  | <b>1995</b>                       | <b>1996</b> | <b>1997</b> | <b>1998</b> |
|  | <b>Percent Agree Response</b>     |             |             |             |
| 1. The Board contacted me promptly after I filed my complaint.                                   | 71                                | 74          | 75          | 77          |
| 2. Before hiring, I thoroughly checked my contractor's qualifications.                           | 49                                | 50          | 46          | 48          |
| 3. The procedures for investigating my complaint were clearly explained to me.                   | 66                                | 70          | 70          | 71          |
| 4. The Board kept me informed of my case's process during the investigation.                     | 56                                | 60          | 62          | 64          |
| 5. I was treated courteously by the Board's representative.                                      | 78                                | 82          | 82          | 84          |
| 6. My case was processed in a timely manner.   | 56                                | 60          | 61          | 64          |
| 7. I understand the outcome of the investigation (whether or not I agree with the action taken). | 62                                | 65          | 66          | 68          |
| 8. The action taken in my case was appropriate.  | 50                                | 53          | 53          | 54          |
| 7. I am satisfied with the service provided by the Board.  | 56                                | 58          | 61          | 63          |

### **Cost Recovery**

Pursuant to Business and Professions Code § 125.3, the Board may request the Administrative Law Judge to direct a licensee who is found to have violated Licensing Law to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In FY 1998/1999 the Administrative Law Judge ordered \$170,166 in cost recovery.

### **Complaint Disclosure Policy**

The Board maintains a website ([www.cslb.ca.gov](http://www.cslb.ca.gov)) and a toll free number (800-321-CSLB) for use by the public for the purpose of obtaining general license information regarding the contractor. The licensee's status and list of past and pending legal actions against the licensee is also made available. The website also provides information on the contractor's bond and workers' compensation insurance.

“Pending legal actions” are reported only when investigative staff has substantiated a complaint, and legal action has been requested.

“Past legal actions” include citations previously issued against the licensee and any disciplinary action in which probation, suspension or revocation has occurred.

Information concerning an arbitration decision is not made available to the public unless the licensee fails to comply with the arbitration award. Failure to comply results first in suspension of the license, then, if the failure persists for one year, the automatic revocation of the license. The Board reports civil judgments against a contractor when suspension is pending or has occurred.

## CONSUMER OUTREACH AND EDUCATION

### **Public Awareness Campaigns**

Consumer outreach teaches consumers how to protect themselves against unlicensed or unreliable contractors. Outreach also seeks to inform consumers about the services available from the CSLB. In 1995, the Board launched an awareness campaign with the slogan, “Get Smart. Get a Licensed Contractor.” Public service announcements were developed and 1,200 radio and television advertisements were purchased and placed in major media markets throughout the State. The buys resulted in an immediate measurable increase in phone calls received, booklets requested and contractor license status inquiries.

In the summer of 1997, the “Get Information to Build On” campaign was conducted in Sacramento County. Research determined public awareness of CSLB services (automated license check, complaint filing, and publication orders). Public awareness about hiring contractors and the consumer protections in contractor law (e.g., limitations on down payments) was also assessed. That research led to public service announcements, billboards and print advertisements, including a 12-page newspaper insert.

Publication requests broke records during the campaign: telephone calls to the toll-free telephone system increased 16 percent in June and 11 percent in July. Calls from the 916 area code (Sacramento area) increased 14 percent in June and 17 percent in July. Complaints filed in Sacramento County increased 33 percent in July.

The 1998 public awareness campaign included public service announcements in eight of the hardest-hit flood disaster regions in California and four consumer forums in partnership with media sponsors and trade associations.

Beginning in 1999, a two-year campaign commenced using data from the census, building and construction industry, Department of Finance and CSLB to develop CSLB target audiences. (Appendix 1 – Consumer Education Target Data) The data indicate significant concentrations of vulnerable groups, such as elderly homeowners, in Southern California. The Board, therefore, commissioned large purchases of air time on Southern California radio stations. CSLB used radio because it offered the most cost-effective way to deliver the “Get Information to Build On” messages to the target audiences.

Initial results are promising. The numbers of telephone calls to check a license and the number of requests for publications were up in July 1999, compared to the numbers in July 1998. Additionally, internet license checks and publication requests were up in July 1999.

In the first three months of the current public awareness campaign, co-operative advertising (CSLB pays half; vendor pays half) was conducted with promoters of the five largest home and garden shows in California. The Board had a 50 percent increase in the number of consumers requesting publications as compared to publications requested at the same shows without advertising in July 1998.

In addition to the activities conducted through a public relations contractor, consumer outreach and education activities include a number of ongoing programs. CSLB develops and distributes consumer publications and attends Home and Garden and trade shows where the Board messages are of immediate interest to consumers. Further, the CSLB provides speakers for consumer and trade organizations, and partners with governmental agencies to reach consumers and agency constituents.

The CSLB develops and organizes community-based consumer forums throughout the state in cooperative sponsorship with local media. For example, a consumer fair was organized by CSLB and co-sponsored by Telemundo Television in February 1999. The forum was held on Olvera Street in Los Angeles where thousands of Los Angeles residents received helpful information. A similar forum is planned for Glendale in spring 2000.

## **PART 2.**

### **Contractors State License Board**

#### **BOARD'S RESPONSE TO IDENTIFIED ISSUES AND RECOMMENDATIONS FROM PRIOR 1996/97 REVIEW**

Senate Bill (SB) 2036 (Chapter 908, Statutes of 1994) requires periodic legislative review of all boards under the aegis of the Department of Consumer Affairs (DCA). In addition, SB 2036 requires each board to issue a written report to the Joint Legislative Sunset Review Committee (JLSRC) and also applies a specific sunset date to each board unless extended by subsequent legislation.

The first CSLB Sunset Review Report was a comprehensive response to the JLSRC inquiry concerning all aspects of CSLB programs. It was submitted to the JLSRC and DCA in November of 1996. After reviewing the report and receiving public testimony the JLSRC authored legislation, SB 825 (Chapter 813, Statutes of 1997), extending the Board's sunset date to January 1, 2001. In addition, SB 825 limited the subsequent review of the CSLB to certain unresolved issues identified by the JLSRC. They are:

- Legal scope of work for the General Building (B) license classification
- Whether any Specialty (C) Contractor license classifications should be consolidated, redefined or eliminated
- Home Improvement Industry: Consideration of a separate license classification for home improvement contractors and whether the Home Improvement Salesperson registration should be eliminated
- CSLB Asbestos and Hazardous Substance certification programs: Consideration of transferring the programs to other state regulatory agencies
- Recommendation for independent review of CSLB licensing exams and exam waiver criteria
- Reduction of complaint processing time
- Cooperative efforts with local building officials for reporting violations of the Contractors License Law
- Restitution for consumers who have suffered financial losses due to violations of the law by contractors

- Increased costs for the CSLB industry expert witness program
- Uncollected nonlicensee civil penalty assessments

This report presents CSLB's responses to the JLSRC concerning the above unresolved issues. This report contains ten questions or issues raised by the Joint Legislative Sunset Review Committee. Each issue is expressly stated, followed by a background summary and subsequent report of the Board's action to address the issue.

**Issues 1 & 2:** The Joint Legislative Sunset Review Committee (JLSRC) addressed the following two issues separately in their final recommendations. However, the two issues are presented together in this report because both involve the license classification system and both were handled within the same CSLB review process.

#### **ISSUE 1**

**Should a General Building (B) contractor be limited to taking contracts when the job involves three or more unrelated specialty trades?**

#### **ISSUE 2**

**Which Specialty contractor license classifications should be consolidated, redefined or eliminated?**

### **CSLB RESPONSE**

#### **BACKGROUND**

The construction industry has always involved certain specialty trades that are unique, but integral components of the building industry. The Contractors State License Board (CSLB) licenses Specialty (C) contractors in more than 39 different classifications, as well as General Building (B) contractors and General Engineering (A) contractors.

From the inception of the CSLB in 1929, until a 1996 California Court of Appeals decision, *Home Depot U.S.A. v. Contractors State License Board*, General Building (B) contractors could not contract for construction services unless three or more unrelated building trades or crafts were involved (except framing or carpentry). For example, a B contractor could not take a contract to do plumbing or electrical work exclusively.

Essentially, the Home Depot decision invalidated the Contractors State License Board regulation related to the General Building (B) license classification, and raised concerns about the health, safety and welfare of consumers. The decision made it legal for a B contractor to take a contract when the job involved a single specialty trade such as plumbing.

Assembly Bill 1455 (1995/96 session) was a response to the Home Depot decision. It contained language, drafted without CSLB collaboration, intended to overturn the effect of the Home Depot decision.

The Governor vetoed AB 1455, requesting that the CSLB submit a proposal, which would include: “. . . only specialty classes which have consumer protection needs.” The JLSRC also commented on specialty license classifications in its report, stating: “The Committee is not supportive of specialty license classifications absent compelling findings that classification protects consumers.” Accordingly, the JLSRC directed the Board to report its findings and recommendations by October 1, 1998.

The Specialty License classification review process undertaken by the Board involved public hearings, an industry survey, CSLB data analysis, and a Specialty Classification study. Each of these processes focused on whether any license classifications should be modified.

First, the Board appointed a task force comprising the public, the industry and Board Members. The task force thoroughly examined the entire classification system - General Engineering (A), General Building (B) and Specialty (C) contractors. Discussions at a series of public hearings centered on the concepts of redefining, eliminating or consolidating the various license classifications and the impact any such actions would have on the health, safety and general welfare of the public.

Second, the task force surveyed members of 27 construction industry associations and eight city or county building departments, including Los Angeles and San Joaquin Counties. (Appendix 2 – Classification Taskforce Survey) The task force found wide concern at the prospect of deregulating the Specialty license classes. The participants cited a variety of potential health and safety risks to consumers and workers if the demonstrated competency standards for the Specialty trades were nonexistent.

Third, the task force reviewed the CSLB’s enforcement complaint data (Appendix 3 – Classification Taskforce Enforcement Complaint Data), and gave particular consideration to the potential financial risks to consumers, especially those who contract for home improvement work (remodeling and repairs).

Last, the task force commenced a study of specialty license classifications to decide whether some classifications should be consolidated. To assure that licensees who conduct business in a specific trade have the knowledge, skills and abilities necessary to provide quality services, the task force relied heavily on similarities of the Specialty license classifications. (Appendix 4 – Classification Taskforce Redefinition Model)

The task force developed recommendations based on the health, safety and welfare of the public, and referred them to the Board for consideration and action.

## **BOARD ACTION**

The CSLB took separate actions on the General Building (B) contractor issue and the Specialty (C) contractor issue.

### **GENERAL BUILDING (B) LICENSE CLASSIFICATION:**

Changes to the General Building (B) classification flowed from a cooperative effort among CSLB, the Senate Business & Professions Committee, industry representatives, and the Administration. Through the provisions of SB 857 (Statutes of 1997, Chapter 812), Business & Professions Code § 7057 now specifies, in summary, that a General Building (B) Contractor may legally undertake:

- A prime contract or subcontract that involves framing or carpentry;
- A prime contract or subcontract that involves at least two unrelated trades or crafts other than framing or carpentry (framing or carpentry cannot be counted as one of the two unrelated trades or crafts);
- A contract for a single Specialty trade (plumbing, electrical, sheet metal, etc.) provided the work of the contract is subcontracted to a properly licensed Specialty contractor; or
- A contract for the work of any Specialty license classification for which they hold a Specialty license classification.

The redefined scope of work for the General Building (B) classification provided under SB 857 increases the business opportunities for B contractors and assures that specialty work will be performed by a General Building contractor or Specialty contractor who has demonstrated the requisite knowledge and expertise.

#### SPECIALTY CONTRACTOR (C) LICENSE CLASSIFICATIONS:

The Board reviewed and modified seven (17.5 percent) of the Specialty contractor (C) license categories. Using its regulatory authority, the CSLB made these modifications (Appendix 5 – Regulatory Definitions of Modified Specialty Classifications):

- Metal Roofing (C-14) was subsumed into Roofing (C-39) and Sheet Metal (C-43.) *(There are 255 active licensees who hold the C-14 classification. Five of them hold a C-14 only, and 213 of them also hold a C-39 or C-43)*
- Cabinetry and Mill Work (C-6) was subsumed into the Carpentry (C-5) class. *(There are 3,929 active licensees who hold the C-5 classification.)*
- Lathing (C-26) was subsumed into the Plastering (C-35) class. *(297 active licensees hold the C-26 classification. 2,034 active licensees hold the C-35 classification)*

Additionally, the Board decided it is not in the best interest of consumers to eliminate any Specialty license classifications, considering the results of the health and safety survey (Appendix 1 – Classification Taskforce Survey), public testimony, and potential financial risks to consumers.

CSLB’s review of the licensing system resulted in the Board moving to restructure about 25 percent of its classifications, certifications and registration program. The regulation process for each of the Specialty license modifications is complete. On June 29, 1998, the Board sent a letter to the Governor outlining the final results of the Board’s review of the its licensing classification and certification system. (Appendix 6 – Letter to Governor Wilson)

### ISSUE 3

**Should there be a separate license classification for home improvement contractors, and should registration of home improvement salespersons be eliminated?**

### CSLB RESPONSE



**BACKGROUND: HOME IMPROVEMENT CERTIFICATION**

The JLSRC's initial sunset review questionnaire asked about home improvement contractors. In response, the board gathered data showing that the majority of financial injury and consumer complaints filed with the CSLB are attributable to home improvement construction projects. Home improvement projects include repairing, remodeling, altering, converting, modernizing or adding to a residential property. For example, home improvement could include work on a residential driveway, swimming pool, fence, porch, kitchen, or bathroom.

CSLB appointed a task force, including industry, Board members and public representatives to review the possibility of establishing a classification or certification for contractors who perform home improvement work. The task force determined that although the prime contractor (often a B contractor) is held responsible for consumer complaints under the law, the reason for the complaint could be due to the work performed by a subcontractor (roofing, plumbing, painting, etc.) hired by the prime contractor. Further, the task force concluded that it is common for a Specialty contractor to be the prime contractor on home improvement projects.

**BOARD ACTION: HOME IMPROVEMENT CERTIFICATION**

The Board adopted a proposal to require certification of all prime contractors and subcontractors who perform home improvement work. The Home Improvement Certification plan originally submitted to the legislature would have required home improvement contractors to:

- Pass an open book exam dealing with selected topics on the home improvement business, AND
- Fulfill a continuing education requirement, OR
- Post a blanket payment and performance bond in the amount of \$250,000.

However, certain components of the Home Improvement Certification plan met with opposition. The final version contains only the open book exam requirement, effective July 1, 2000 (Statutes of 1997, Chapter 888). The new certification examination and study guide have been mailed to all licensees. Contractors can also take the examination on the Internet, which is scored in real time. It is anticipated that approximately 200,000 contractors will become certified by July 1, 2000. (Appendix 7 – Home Improvement Certification Reference Booklet)

**BACKGROUND: ELIMINATION OF HOME IMPROVEMENT SALESPERSON REGISTRATION**

Under specified conditions of the Contractors License Law, the sale of home improvement goods and services by Home Improvement Salespersons (HIS) is illegal unless such individuals have registered with the CSLB.

The JLSRC's initial sunset review questionnaire asked about elimination of registration of home improvement salespersons. In response, the Board showed evidence that very few legal actions are pursued against home improvement salespersons even though CSLB has the authority to discipline them. This is because the law and CSLB hold the

contractor responsible for the actions of the HIS who sells the job. Even without registration CSLB would maintain authority to enforce against individuals who violate the law.

CSLB sponsored AB 771(Margett) in the 1995/96 session to repeal the HIS registration as needless regulation. However, the HIS repeal language was dropped due to opposition from a number of consumer groups. There was concern that protections enacted in 1994 would be nullified by the repeal of the HIS registration requirement. Specifically, the 1994 legislation amended section 7153 of the Business & Professions Code to preclude a contractor from taking a security interest under a home improvement contract unless the salesperson is duly registered by the CSLB.

**BOARD ACTION: POSTPONE REPEAL OF HOME IMPROVEMENT SALESPERSON REGISTRATION**

The Board recommends that the pursuit of legislation to repeal the HIS registration requirement be postponed while the issues related to security interests and home improvement contracts undergo legislative review.

**ISSUE 4**

**Should the Board continue to certify and regulate asbestos contractors or those involved in the removal or remedial action of hazardous substances?**

**CSLB RESPONSE**

**BACKGROUND: CERTIFICATION & REGULATION OF ASBESTOS CONTRACTORS**

The JLSRC's initial sunset review questionnaire asked about certification and regulation of asbestos contractors. In response, CSLB noted that it does not have the expertise to determine whether a contractor has violated laws pertaining to asbestos. While CSLB has the authority to discipline contractors who violate such laws, it must rely on the investigations and testimony of Department of Occupational Safety and Health (DOSH) experts or officials from a local health agency. Currently, asbestos contractors must complete applications with both CSLB and DOSH before undertaking asbestos-related work.

**BOARD ACTION: CERTIFICATION & REGULATION OF ASBESTOS CONTRACTORS**

The Board recommends that the responsibility for the asbestos certification program be transferred to DOSH, and forwarded proposed language to DOSH. DOSH raised a number of issues that legislation must address before transferring the asbestos certification. CSLB will continue to work with DOSH to resolve their concerns in order to transfer the program, eliminate the requirement that applicants apply to both agencies and allow asbestos contractors to enjoy "one-stop shopping." CSLB intends to continue to issue disciplinary actions against contractors who violate asbestos laws, pursuant to investigations and findings of fact by DOSH.

## **BACKGROUND: CERTIFICATION & REGULATION OF HAZARDOUS SUBSTANCES REMOVAL**

Legislation enacted in 1986 (Statutes of 1986, Chapter 1443) gave CSLB responsibility for issuing a certification exam to contractors who engage in the removal or remedial action of specified hazardous substances (HAZ-MAT). In addition, CSLB has the authority to discipline contractors who perform this work without holding HAZ-MAT Certification.

The JLSRC's initial sunset review questionnaire asked about HAZ-MAT certification. In response, CSLB noted that it has the authority to discipline, but does not have the expertise to determine whether a contractor has followed proper procedures in the removal or remedial action of HAZ-MAT substances.

Initially, the Board recommended that the responsibility for the HAZ-MAT Certification be transferred to the Department of Toxic Substances Control (DTSC) because the agency has the necessary expertise to regulate the program. However, DTSC opposed the recommendation because the agency has no investigative staff, no mechanism to process applications, and no method to test for the HAZ-MAT Certification. Currently, the DTSC holds property owners responsible for proper disposal procedures. Typically, the property owners hire registered engineers to develop disposal plans and oversee the disposal work. In cases of improper disposal of the hazardous materials in question, the DTSC notifies the owner that additional work is needed. The DTSC performs no other enforcement action. It appears that the public interest would not be served by transferring the HAZ-MAT Certification Program at this time.

## **BOARD ACTION: CERTIFICATION & REGULATION OF HAZARDOUS SUBSTANCES REMOVAL**

The Board recommends it continue to administer the program as noted in the CSLB Registrar's June 16, 1998, letter to DTSC (Appendix 8 – Letter to Department of Toxic Substances Control).

### **Issue 5**

**Should an independent analysis be conducted on the examinations required by the Board to obtain a contractor's license, and to determine when a waiver of the examination requirement may be appropriate?**

## **CSLB RESPONSE**

### **BACKGROUND**

Based on the statistical data provided by the CSLB in the initial sunset review, the JLSRC stated that the pass rates for some of the licensing exams are too high and raised concerns about the waiver of the exam. The Committee recommended: 1) that the exams be analyzed by an independent expert to assure their validity; and 2) to study the exam waiver process and report back to the JLSRC on whether it is appropriate to waive exams.

### **BOARD ACTION**

The Board agreed with the JLSRC's recommendation that an independent analysis of the Board's examinations and examination waivers be performed. Cooperative Personnel

Services (CPS) has completed the analysis of CSLB's examinations (Appendix 9 – CPS Licensing Examination Program Analysis). CPS is still analyzing the Board's exam waiver program. The CSLB expects the analysis to be complete before the end of the year.

#### **BOARD ACTION: ANALYSIS OF CSLB'S EXAMINATIONS**

The CPS auditor concluded that CSLB's examinations consistently meet or exceed professional standards for test development. The auditor observed that due to limited resources, the Board had not been able to update the occupational analyses for many of its licensing examinations. In addition, the Board had not been able to replace overexposed test questions in the more frequently administered licensing examinations.

To address the issues raised in the audit report, the legislature authorized the necessary funding for the additional testing specialists. The Board has set a schedule for conducting occupational analyses and updating examinations for each classification over the next five years. The Board will maintain a schedule whereby a new occupational analysis for each classification will be conducted every five years, subject to continuing availability of resources.

To minimize overexposure of test questions, the Board will utilize additional testing personnel to conduct periodic test question development workshops with subject matter experts. Maintaining an ongoing examination development schedule will enable the Board to increase the size of its question pools, and to ensure that examinations remain consistent with current practice in between occupational analyses.

#### **ISSUE 6**

**Should the Board shorten the time frame for processing complaints and the completion of investigations?**

#### **CSLB RESPONSE**

##### **BACKGROUND**

The JLSRC stated in its final recommendations that "About 60 percent of complainants surveyed . . . believe that their cases were processed in a timely fashion. . . [However] a number of investigations take from one to two years to complete before any legal action is taken." In response, the Board outlined some of the causes for delay in the complaint process. It was particularly noted that the rash of natural disasters between 1994 and 1996 had resulted in processing delays due to the increased number of complaints and their complexity. Regardless, the Committee directed the Board to provide recommendations on reducing complaint processing and investigation time.

##### **BOARD ACTION**

A prominent goal of the Board's strategic plan is the fast and effective resolution of consumer and contractor disputes. The Board is pursuing this goal by:

- Re-engineering dispute resolution, since January 1999, the Board has been piloting a re-engineered dispute resolution process to reduce cycle times, increase consumer and contractor satisfaction, and reduce the cost per complaint.<sup>3</sup> The new process involves centralizing the initial processing (intake) and mediation procedures that were previously performed in decentralized district offices. Prior to this districts had inconsistent workloads because of the mobile nature of construction. By consolidating resources, construction complaints will be addressed more quickly and consistently because shifting workload can be managed more efficiently.
- Redefining Performance measures related to dispute resolution and establishing baselines and performance targets.

## **BOARD ACTION**

Another important goal of the Board's Strategic Plan is the fast and effective prosecution of Contractors License Law violations.

- Since March 1999, the Board has been piloting a re-engineered investigation process that relies upon a decentralized mobile investigative staff that is not hindered by dispute resolution workload or geographic boundaries. Through centralized initial processing, cases requiring investigation of Contractors License Law violations are getting to investigators sooner and are being assigned to the most appropriate resources. Better, faster and more efficient investigations that result in more effective responses to violations are anticipated.
- Performance measures related to investigation have been refined, baselines established and performance targets set.<sup>4</sup>
- By eliminating time spent by investigators on dispute resolution and focusing these resources on investigation of unscrupulous contractors, the Board anticipates and expects improved results in the form of increased legal actions.

## **ISSUE 7**

**Should there be more of a cooperative effort between the Board and local building officials to improve reporting of violations of the Contractor's Act?**

## **CSLB RESPONSE**

### **BACKGROUND**

The JLSRC's initial sunset review report noted that CSLB receives very few complaints from state or local agencies. The JLSRC commented that: "In many instances however,

<sup>3</sup> The re-engineering pilot is limited to four Southern California Counties – Los Angeles, Orange County, Riverside and San Bernardino. The Board will review the results of the pilot at its January 2000 meeting with an eye toward statewide implementation.

<sup>4</sup> The Board has designed its measures in such a way that its organizational units are encouraged to work cooperatively to achieve high level strategic goals.

building officials are not aware of laws pertaining to contractors. . .” The Committee suggested that the Board establish a “contact program” with building officials.

The Board responded that it has long-standing ties with building officials. Since 1994, the law has required that Board composition include one active building official. In addition, CSLB and the California Building Officials (CALBO) have had a liaison committee for a number of years. Importantly, it was noted that CSLB frequently cooperates with building officials to discipline licensees for violating building codes.

#### **BOARD ACTION**

The Board agrees that CSLB and building officials should cooperate to enforce the license law and building codes, and increase communication with CALBO. In November 1998, the Board held a roundtable meeting with CALBO leadership in Riverside to discuss better communications and how the Board could better serve Building Officials. The meeting resulted in CSLB putting together a pamphlet of frequently asked questions for Building Officials that is available as a pamphlet on our website. (Appendix 10 – Frequently Asked Questions) The roundtable discussion also resulted in a cooperative effort between the Board and CALBO to jointly sponsor legislation that will make it easier for building officials to verify contractors’ workers’ compensation insurance.

The Board has actively worked with the management of both CALBO and International Conference of Building Officials, as well as with local building departments, in order to provide better building code enforcement. CSLB enforcement staff in various geographical locations throughout the state has been attending the local building official meetings on a quarterly basis to maintain this liaison work.

This increased cooperation is also listed as an objective in the Board’s 1999/2000 Strategic Plan. To meet this objective, roundtable discussions have been held in various locations throughout the state, in conjunction with other Board meetings, to identify ways in which CSLB and CALBO members can cooperate to provide better enforcement of building codes. In addition, letters were sent by CSLB enforcement supervisors throughout the state to their local building departments detailing areas of mutual assistance, such as direct telephone numbers to contact CSLB staff, waiving of fees for documents and witness appearances by both agencies, attending the other agency’s staff meetings when requested and providing assistance with contractors who ignore local requirements. The enforcement staff as well as CSLB as a whole will continue to build on this relationship in order to provide more effective regulation of contractors who do not comply with local codes.

#### **ISSUE 8**

**Should the state consider other alternatives to providing restitution to the consumer, such as requiring performance bonds, or establishing an insurance or recovery fund?**

## **CSLB RESPONSE**

### **BACKGROUND**

The JLSRC noted that too frequently consumers are unable to recover the amount of money necessary to rectify problems when contractors abandon a project or perform work poorly. The Committee pointed out that 15 states administer various recovery funds for the benefit of consumers and recommended that the Board consider making other methods of restitution available to consumers in California.

During the Board's public hearings about the home improvement industry, the discussion before the Board particularly emphasized consumer restitution as well as other alternatives such as mandating payment and performance bonds and/or increasing the penal sum of the contractor's license bond. Throughout the discussions, industry participants expressed concern that these restitution methods would significantly increase the cost of doing business as well as consumer costs, and create a barrier to entry for new license applicants. Despite these concerns, the Board continued to work on these issues.

#### Methods of Ordering Restitution

As presently structured, the CSLB has only limited methods of providing restitution to consumers who are financially injured by licensed contractors. When CSLB is successful in proving a violation of Contractors' License Law and has demonstrated that the violation led to a particular financial injury, the Registrar may order restitution for the consumer. If the contractor fails to pay the ordered restitution, the Registrar can take action against the contractor's license, suspending it until payment is made and revoking it, if there is no payment after one year.

The same process can be used when a consumer sues the contractor and is awarded a judgement in civil court or when the consumer prevails in an arbitration proceeding. If the contractor fails to pay, the Registrar can take action against the license.

These methods of restitution rely on pressure against the license. They are of limited utility if the contractor leaves the profession, goes to work for someone else, or files for bankruptcy. Manifestly, the Board's leverage for restitution is limited.

#### Bonds

One way of compensating for financial injury uses the license bonds. Today each licensed contractor is required to carry a \$7,500 surety bond (\$10,000 for pool contractors). The limitations of this bond are well documented:

- The bond pays out only upon a demonstrated violation of contractor's license law;
- A contractor in trouble with one consumer is often in trouble with others. Multiple claimants against the same bond reduce the amount available to each consumer. When the bond is exhausted no compensation is forthcoming; and

- The bond only covers work itself, not secondary damage caused as a consequence of a contractor's poor workmanship or by negligence on the work site.

Over the years, CSLB has examined ways to increase bond coverage for consumers. The Board originally proposed requiring payment and performance bonds in the home improvement market in the legislation creating the Home Improvement Certification. As a result of legislative opposition, this proposal was not enacted.

### Commercial General Liability Insurance

The JLSRC specifically asked about the viability of insurance as part of CSLB's consumer protection strategy. In January of 1999, the Board began to examine the value of licensed contractors carrying Commercial General Liability insurance (CGL). Our first workshop, held in March 1999, demonstrated that CGL would close a gap in CSLB's consumer protection strategies by providing insurance coverage for consequential damages. CSLB held a second workshop to explore the cost and availability of CGL. Surprisingly, representatives of a number of insurance companies opposed mandating CGL. These insurance representatives were concerned that mandating CGL would require the industry to create an uninsured contractors' pool.

As an alternative to mandating insurance, CSLB is exploring the feasibility of mandating disclosure of each contractor's CGL status. Under this proposal, the CSLB would monitor and disclose to the public whether the contractor carries a minimum CGL policy. This alternative is being evaluated to determine if it would provide reasonable consumer protection without creating a barrier to licensing. Concern has also surfaced about disclosure. Some fear the mere act of disclosure would draw more suits and drive up costs.

### Recovery Funds

CSLB continues to examine the approaches other states have taken to address financial injury to consumers. A number of states have adopted recovery funds. Some of these funds are very specific. For example, Indiana's recovery fund covers only the work of plumbers, while New Jersey's plan covers only new homes. Some are for the benefit of homeowners only and other funds are available to unpaid subcontractors and material suppliers as a substitute for lien rights. Most of the recovery funds are funds of last resort, requiring legal work after the consumer obtained a judgement. Moreover, the Hawaii, Massachusetts, Florida and Utah lien recovery funds stated that the process of recovering from the fund was burdensome, complicated and could have significant attorney costs. The poor and uneducated have a difficult time collecting from the fund. Most recovery funds are from fees that bear no relationship to the business volume or risk of a given contractor. The fees to support the fund come from reputable contractors. No fund has a successful method of recovering from the contractor after a payout. To replenish recovery funds, states relied on after-the-fact strategies ranging from reassessing fees to waiting for next year's assessments.

This year, Assemblyman Honda introduced Assembly Bill 742 to create a lien recovery fund administered by CSLB. Legislative Counsel draft language for the Honda bill would create a fund available to laborers, subcontractors and material suppliers who had acquired lien rights on California homes even though the homeowner paid the prime contractor in full. Under the



legislative counsel draft, each California contractor certified for home improvement work would pay \$200 a year. CSLB anticipates that this would result in a fund of about \$50 million a year. Since many lien disputes are settled without CSLB involvement, CSLB has no perspective on whether this amount would be enough or too much. CSLB has initiated a review of our licensee pool to determine how often (and for how much) lien disputes result in a homeowner paying twice for home improvement work.

## **BOARD ACTION**

The Board has directed the Registrar and staff to work with industry and other interested parties for the purpose of developing a workable solution to the problem of financial injury to consumers. CSLB is working with interested parties to better protect consumers by creating a Home Improvement Protection Plan (HIPP) for the year 2000. Below are the key elements:

- New Bond: CSLB is working with a group of California sureties to create a new bond that would supplement the present \$7,500 bond. The new \$7,500 bond would be carried by home improvement contractors and would be available only to homeowners, thereby doubling bond protection for homeowners.
- New Civil Penalty: CSLB is proposing a new civil action to allow material suppliers to seek the same 2 percent per month penalty from contractors as presently available for subcontractors under the Business & Professions Code section 7108.5. The theory being that if an interest payment is available to material suppliers, the suppliers will be more likely to file suit against the contractor rather than assert lien rights against a homeowner.
- New Disclosure Requirement (Insurance): As discussed above, consequential damage is not generally covered under CSLB law. This proposal would allow the Board to disclose whether or not the contractor carries general liability insurance and would underscore the value of insurance to the consumer.
- New Notices: Effective consumer protection almost always relies on getting information to the consumer in a way that he or she can understand. CSLB is working on a series of proposals to make our notice requirements more useful to consumers.
- Revision of CSLB's Criminal Conviction Review Process: CSLB is developing a comprehensive approach to reviewing our applicants and licensees criminal history. This review is particularly necessary given the introduction of the Home Improvement Certification program. CSLB is concerned that the certification may appear to constitute an approval of the individual's suitability for home improvement work. The new review process will include a fingerprint provision.

## **ISSUE 9**

**It is unclear why the expenditure for use of industry expert witnesses to investigate the majority of licensee complaints has increased substantially, and whether this component of the enforcement program has helped the Board effectively use enforcement resources.**

### **CSLB RESPONSE**

#### **BACKGROUND**

The JLSRC noted from the initial sunset review report a sizable increase in the expenditures for the Industry Expert program. Specifically, between fiscal year 1992/93 and fiscal year 1995/96, expenditures grew from \$550,000 to \$1.3 million. The issue was eventually referred to the Senate Budget Committee, which accepted the CSLB's explanation that the increases were largely attributable to the number and complexity of the cases resulting from natural disasters.

In addition, CSLB clearly stated that the Industry Expert program is essential to the enforcement program in order to establish workmanship violations, as well as determine the current and justifiable costs for corrective work.

| Industry Expert<br>(Millions) | FY 95/96     | FY 96/97     | FY 97/98     | FY 98/99     |
|-------------------------------|--------------|--------------|--------------|--------------|
| <b>Total Costs</b>            | <b>\$1.3</b> | <b>\$1.2</b> | <b>\$1.1</b> | <b>\$1.1</b> |

#### **BOARD ACTION**

For a variety of factors - many well publicized - the dollar costs of home remodeling contracts have increased exponentially. We now see complaints where the remodeling costs exceed the prices for many new homes of 5-10 years ago. Accordingly, the Board's use of industry experts is more valuable than ever. Presently, the Board contracts with an expert to assist the investigator approximately 4,000 times annually. We cannot envision another resource that would be as credible and cost-effective.

As complaints to the Board became more sophisticated, the Board's reliance on the industry experts has increased. To assure the public that industry expert are necessary, the Board has implemented stricter cost controls on the Industry Expert program and new procedures, effective May 1997. Industry expert charges exceeding \$300 must be submitted with a justification for the charges and be approved. Approval depends on: (1) the number of complaint items, (2) the complexity of the evaluation, (3) the specialty involved, (4) the type of testing involved, (5) the required distance of travel, and (6) the urgency of the case for which the inspection is required. Under long-standing CSLB procedure, no industry expert charges exceeding \$500 will be approved without justification and approval prior to the inspection services.

The stricter cost controls have stabilized the expenditures for the program. However, as the enforcement program develops its present efforts to maximum potential, costs for this program should increase. For instance, the Board has increased its efforts to investigate and prosecute contractors for illegal actions by obtaining forensic auditors to provide expert reports and analysis in complex cases involving financial diversion. The role of the Industry Expert as an adjunct to the investigator remains indispensable to the effective enforcement of workmanship issues, code violations and financial fraud.

It should be noted that the cost for experts not only covers the initial industry expert job inspection and report, but it also covers the cost of any re-inspection if the contractor corrects and/or completes the job, as well as testimony in disciplinary hearings.

## **Issue 10**

**Should the Franchise Tax Board (FTB) be granted legislative authority to collect fines that have been assessed against unlicensed contractors?**

### **CSLB RESPONSE**

#### **BACKGROUND**

The JLSRC noted during the sunset review process that CSLB only collected approximately 10 percent of the penalties assessed for license law violations. At the time of reporting, the unpaid assessments totaled more than \$2 million for licensees and more than \$6 million for nonlicensees. The Committee directed the CSLB to explain the inability to collect the civil penalties and to provide the JLSRC with a recommendation for improving collections. Ultimately, the issue was limited to the collection of the nonlicensee penalties.

A large number of nonlicensees who owe penalties do not have attachable assets and cannot be identified by the techniques available to collection agents. The CSLB is currently under contract with two collection agencies. One agency handles collections for penalties for the North, and the other handles the penalties issued in the South. The collection agency fees range from 5 percent (30 days to collect) to 30 percent (90 days to collect). If a civil judgment is obtained to enforce collection, the agency fees increase to 50 percent and 35 percent respectively.

A brief overview of the collection agency data for calendar year 1997 reveals that \$1.5 million in nonlicensee penalty referrals resulted in an average collection rate of approximately 13 percent. According to collection agency staff, most of the successful collections are accomplished within six to nine months of referral. However, the fact that debts are reported to credit reporting agencies has resulted in some payments being made several years after referral.

The concept of using FTB to collect delinquent penalties was first examined by the Board when AB 255, introduced in 1995, sought the authorization for FTB to collect outstanding debts for all state agencies under specified conditions. The amended 1996 bill (Statutes of 1996, Chapter 1001) limited its scope to FTB collections for the Student Aid Commission.

In recent years FTB has been authorized to collect debts for an expanded number of state and local government agencies. They collect fines and penalties for the Department of Labor Standards Enforcement, delinquent motor vehicle registration fees for the Department of Motor Vehicles and delinquent accounts for the Student Aid Commission (Appendix 11- FTB Collection Program Overview). In the original legislation, CSLB was included in the list of agencies that FTB was authorized to collect debts for, but the final version amended CSLB out of the bill.

#### **BOARD ACTION**

The Board directed staff to work with FTB on developing a feasibility study (Appendix 12 – FTB Feasibility Study) to find out whether or not FTB should begin collections for CSLB. For the CSLB feasibility study, the records of approximately 10,000 nonlicensee penalty assessments totaling \$11 million were sent to FTB to ascertain how many of them could be collected under the FTB system. These assessments represent all of the uncollected nonlicensee citations, including those that were referred to private collection agencies but for which there has been no collection activity.

The initial results of the FTB study are summarized as follows:

#### **Prior Assessments, January 1, 1999 - December 1, 1999:**

Initial collectable amount: \$1 million (1,951 penalty assessments)

FTB costs to collect, first year: \$225,000

#### **Ongoing Assessments, January 1, 2000 - December 31, 2002:**

Assumed amount annually: \$2.5 million

Projected return rate: 16 percent (approx.)

Projected costs to collect: 50 percent (approx.)

#### **CONCLUSION**

Considering the FTB estimated rate of collection at 16 percent, there is only a 3 percent difference between the FTB and private collection agency rates. Given the comparative analysis, including the FTB projected costs, there does not appear to be a compelling financial incentive to pursue legislation at this time.

However, it is notable that the legislation expanding FTB authority to include collection of penalties also included the authority to utilize all of the powers of the FTB in the collection of such debts. This authority, in and of itself, may represent a considerable deterrent to those individuals who may otherwise risk the penalties of unlicensed activity. Since the make-up of the Board is currently in flux, there has been no policy dialogue relative to this point.

## **PART 3.**

### **Contractors State License Board**

#### **BACKGROUND PAPER FOR 1999 PUBLIC HEARING**

##### **Identified Issues, Background Concerning Issues, Staff Recommendations, and Questions for the Board**

**PRIOR SUNSET REVIEW:** The Contractors State License Board (CSLB) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) three (3) years ago (1996-97). In early 1997, both the JLSRC and Department of Consumer Affairs (DCA) released reports indicating they were not entirely satisfied with CSLB's response to several of the issues and problems identified by the Committee, its staff, and the public. Although both the Committee and DCA concurred that contractors should continue to be regulated, and that CSLB is the appropriate entity to engage in that regulation, both branches expressed the concern that "state regulation and licensing of certain contractors may not be needed in all areas currently subject to the Board's jurisdiction if it can be determined, for example, that there is no consumer risk involved." The JLSRC noted that CSLB had appointed a Classification Review and Regulation Reduction Task Force to review the Board's 42 specialty classifications to determine whether some could be eliminated, consolidated, or refined. The JLSRC also noted that, at that time, the Board had not yet come up with an acceptable way to address an appellate court decision invalidating CSLB's regulatory definition of the B-general building contractor category (see below). In addition, the Joint Committee instructed CSLB to hold public hearings on the possibility of creating a certification program for home improvement contractors, to contract with an independent exam expert to analyze the Board's licensing exams, find ways to shorten the time frame for processing complaints and completing investigations, explore ways to provide restitution to consumers when they have been injured by contractors (*e.g.*, a performance bond requirement or the establishment of an insurance or recovery fund), and address other issues identified during CSLB's sunset review.

Because there were still major unresolved issues involving the regulatory powers of this Board, the JLSRC recommended, and both DCA and the full legislature agreed, to extend CSLB's existence for only two more years (whereas most other boards were extended for four years). The legislature passed SB 825 (Greene) (Chapter 813, Statutes of 1997), which extended CSLB's sunset date to July 1, 2000 and instructed the Board to address the unresolved problems as identified by the JLSRC prior to the next sunset review hearing. SB 1306 (Figueroa) (Chapter 656, Statutes of 1999) extended the sunset date of CSLB for one more year, so that it could be reviewed in 1999. The following are unresolved issues pertaining to the CSLB, or areas of concern for the JLSRC, along with background information concerning the particular issue. Where necessary, the staff of the JLSRC has made preliminary recommendations for members and DCA to consider. There are also questions that staff has prepared concerning the particular issue. The CSLB was provided with these questions and should address each one.

## CURRENT SUNSET REVIEW ISSUES:

**ISSUE #1. THE ISSUE PERTAINING TO THE LICENSING OF B-GENERAL CONTRACTORS HAS BEEN RESOLVED. HOWEVER, IT DOES NOT APPEAR THAT THE BOARD HAS ADEQUATELY ADDRESSED WHICH “SPECIALTY CLASSIFICATIONS” COULD BE ELIMINATED. IT IS UNCLEAR WHETHER THERE WOULD BE ANY BENEFIT TO THE CONSUMER IN IDENTIFYING SUBSPECIALTIES OF EXISTING CONTRACTOR CLASSIFICATIONS AND PROVIDING A “MERIT BADGE” TO THESE CONTRACTORS.**

**BACKGROUND:** The CSLB licenses Specialty (C) contractors in more than 42 different classifications, as well as General Building (B) contractors and General Engineering (A) contractors.

From the inception of the CSLB in 1929, until a 1996 California Court of Appeals decision, *Home Depot U.S.A. v. Contractors State License Board*, General Building (B) contractors could not contract for construction services unless three or more unrelated building trades or crafts were involved (except framing or carpentry). For example, a B-contractor could not take a contract to do plumbing or electrical work exclusively.

Essentially, the *Home Depot* decision invalidated the Contractors State License Board regulation related to the General Building (B) license classification, and raised concerns about the health, safety and welfare of consumers. The decision made it legal for a B-contractor to take a contract when the job involved a single specialty trade such as plumbing.

Assembly Bill 1455 (1995/96 session) was a response to the *Home Depot* decision. It contained language, drafted without CSLB collaboration, intended to overturn the effect of the *Home Depot* decision. The Governor vetoed AB 1455, requesting that the CSLB submit a proposal, which would include only specialty classes for general contractors who have consumer protection needs. The Governor also stated, “*Not all of the current 42 specialty classifications which require special licensure are in the best interest of the building industry or the public. Requiring additional years of experience, testing and delay for individuals in trades where there is no consumer risk limits work options for general contractors, drives prices up to consumers and is simply anti-business and anti-competitive.*”

By vetoing this bill, the Governor now allowed for a general contractor to perform work in any other specialty area without restriction, even if it was in an area in which the contractor had no experience or skill. This was of grave concern to the JLSRC and the CSLB. The JLSRC directed the CSLB to respond to the Governor’s request, attempt to resolve the B-Contractor dispute, and at the same time review all of its specialty classifications and determine which ones could be consolidated, redefined or eliminated, and report its findings and recommendations by October 1, 1998. The JLSRC also commented that: “The Joint Committee is not supportive of specialty license classifications absent compelling findings that classification protects consumers.”

**Issue Involving General Building (B) License Classification.** Changes to the General Building (B) classification flowed from a cooperative effort among CSLB, the Senate Business & Professions Committee, industry representatives, and the Administration. Through the provisions of SB 857 (Statutes of 1997, Chapter 812), Business & Professions Code § 7057 now specifies, in summary, that a General Building (B) Contractor may legally undertake:

- A prime contract or subcontract that involves framing or carpentry;
- A prime contract or subcontract that involves at least two unrelated trades or crafts other than framing or carpentry (framing or carpentry cannot be counted as one of the two unrelated trades or crafts);
- A contract for a single Specialty trade (plumbing, electrical, sheet metal, etc.) provided the work of the contract is subcontracted to a properly licensed Specialty contractor; or
- A contract for the work of any Specialty license classification for which they hold a Specialty license classification.

As indicated by CSLB, the redefined scope of work for the General Building (B) classification provided under SB 857, will now increase the business opportunities for (B) contractors and assures that specialty work will be performed by a General Building contractor, or Specialty contractor who has demonstrated the requisite knowledge and expertise.

**Issue Involving Specialty Contractor (C) License Classifications.** Prompted by the JLSRC and the Administration, the CSLB used its Classification Review and Regulation Reduction Task Force to review all 42 specialty licenses. The review conducted by the Task Force involved public hearings, an industry survey, CSLB data analysis, and a “Specialty Classification” study. Based on this review, the Task Force made recommendations to the Board concerning the consolidation and modification of certain specialty license classification. It is not clear whether the Task Force made any recommendations concerning the elimination of any classifications.

The CSLB reviewed the recommendations of the task force and agreed to consolidate only seven of the specialty contractor (C) license categories. Additionally, the Board decided it is not in the best interest of consumers to eliminate any specialty license classifications, considering the results of the health and safety survey, public testimony, and potential financial risks to consumers. On June 29, 1998, the Board sent a letter to the Governor outlining the final results of the Board’s review of the its licensing classification and certification system.

The CSLB submitted to the JLSRC for review a copy of its one-page “Health and Safety Survey” that it sent to industry/trade associations and some city/county building departments. It also submitted a breakdown of complaint data for each specialty classification during the period from 1993 through 1996. The CSLB indicated that its Task Force had conducted a thorough analysis of specialty license classifications.

The JLSRC has not received any analysis of the conclusions or justifications that were reached concerning each of the specialty (C) license classification by the Task Force. Nor has it had an opportunity to review the study performed by the Task Force or the results of the survey. Based on the complaint data, there are certain classifications that have little if any complaints filed against them. This would indicate that the potential for public harm in these areas is minimal. It is also unclear why the survey was mostly sent to industry/associations, which have a vested interest in maintaining these licensing classifications.

**Issue Involving “Merit Badges” for Contractors.** In 1998, the Registrar for CSLB proposed a plan to develop a type of “merit badge” for contractors. Under this proposal, CSLB would identify areas of specialization within the existing contractor classifications that are important to consumers. The Board would then develop a voluntary testing and certification system covering these specialties. Once a contractor passed the test, he or she would be allowed to advertise as a certified specialist in that area. The Registrar analogized this approach to specialty certifications in the medical field. He noted that such a system would provide CSLB with flexibility to deal with new and developing techniques of construction and provide incentives and an acknowledgment to contractors who make an extra effort. Although some Board members voiced concerns about the process of identifying the subspecialties and the problem of ensuring that a licensee remains competent once the merit badge is awarded, CSLB approved the concept and instructed the Registrar to identify key components of the merit badge system by March 31, 1999. It was indicated that the Board will seek legislation creating this system by October 1, 2000.

**STAFF RECOMMENDATION:** *The Board should conduct a more thorough and objective analysis on the need to continue with the 42 specialty classifications.*

**QUESTION #1 FOR THE BOARD:** *What has the Board done to consolidate, redefine or eliminate some of the “specialty classifications” for contractors? Should the Board adopt a “merit badge” plan to certify contractors in specialty areas?*

**ISSUE #2. ARE THERE STILL CHANGES NECESSARY TO PROTECT CONSUMERS WHO ARE HARMED BY CONTRACTORS, OR THEIR REGISTERED SALESPERSONS, WHO USE RETAIL INSTALLMENT CONTRACTS TO CREATE A SECURITY INTEREST ON A HOMEOWNER’S PROPERTY?**

**BACKGROUND:** Under specified conditions of the Contractors License Law, the sale of home improvement goods and services by Home Improvement Salespersons is illegal unless such individuals have registered with the CSLB.

The JLSRC’s initial sunset review questionnaire asked about the recommendation of the CSLB to eliminate the registration of home improvement salespersons. In response, the CSLB showed evidence that very few legal actions were pursued against home improvement salespersons, even though CSLB has the authority to discipline them. This is because the law and CSLB hold the contractor responsible for the actions of the salesperson who sells the job. Even without registration, CSLB would maintain authority to enforce against individuals who violate the law.

CSLB had sponsored AB 771(Margett) in the 1995/96 session to repeal the salesperson registration as needless regulation. However, the salesperson repeal language was dropped due to opposition from a number of consumer groups. There was concern that protections enacted in 1994 would be nullified by the repeal of the salesperson registration requirement. Specifically, the 1994 legislation amended section 7153 of the Business & Professions Code to preclude a contractor from taking a security interest under a home improvement contract unless the salesperson is duly registered by the CSLB.



The JLSRC supported the elimination of registration for home improvement salespersons based on the recommendation of CSLB that there was no consumer risk involved. However, it was not made unaware of the prior opposition to the CSLB efforts to eliminate this registration requirement. SB 825 was introduced by the Chair of the JLSRC with the repeal of the registration requirement for home improvement salespersons. Shortly thereafter, several consumer groups indicating their opposition to this effort contacted the JLSRC. A meeting was held with all concerned groups and the CSLB. The Board was unable to convince these groups of the need to eliminate this requirement. This language was subsequently dropped from the bill.

The CSLB now recommends that the pursuit of legislation to repeal the salesperson registration requirement be postponed while the issues related to security interests and home improvement contracts undergo legislative review.

There were two companion bills introduced in 1999 that were intended to deal with the incidence of home equity lending fraud by establishing certain requirements a seller must follow in certain retail installment sales contracts involving home improvements; SB 99 (Hughes) and SB 187 (Hughes).

The Governor vetoed SB 99 and signed SB 187.

SB 99 would have established a number of procedures that a seller would have had to follow in certain retail installment contracts to determine if the person entering into such a contract had the ability to repay the loan and not be “at-risk” if he/she entered into this loan. SB 187 will prohibit the seller of a home improvement contract from taking a security interest (other than a mechanic’s lien) on the principal residence of a buyer who is 65 years or older. The bill also will impose civil remedies and penalties for violation of current Business Professions Code provisions prohibiting a lender in a home improvement contract from making direct payments to the contractor.

**QUESTION #2 FOR THE BOARD:** *Should there be any changes to the registration of home improvement salespersons? Has the CSLB investigated the extent to which consumers are harmed by salespersons or contractors who use retail installment contracts for home improvements that create a security interest on the homeowner’s property? What action is the CSLB taking concerning this problem?*

**ISSUE #3. SHOULD CSLB CONTINUE TO CERTIFY AND REGULATE ASBESTOS CONTRACTORS OR THOSE CONTRACTORS INVOLVED IN THE REMOVAL OR REMEDIAL ACTION OF HAZARDOUS SUBSTANCES?**

**BACKGROUND:**

**The Certification and Regulation of Asbestos Contractors.** The JLSRC’s initial sunset review questioned whether CSLB should continue to certify and regulate asbestos contractors.

It was unclear whether CSLB had the expertise or ability to investigate or take action against asbestos related violations of the Labor Code. It recommended to CSLB that it review this issue prior to the next sunset review.

In response, CSLB agreed that it did not have the expertise to determine whether a contractor has violated laws pertaining to asbestos. Though CSLB noted that while it has the authority to discipline contractors who violate such laws, it must rely on the investigations and testimony of Department of Occupational Safety and Health (DOSH) experts or officials from a local health agency. Currently, asbestos contractors must complete applications with both CSLB and DOSH before undertaking asbestos-related work.

The CSLB recommended that the responsibility for the asbestos certification program be transferred to DOSH and forwarded proposed language to DOSH. DOSH raised a number of issues that the legislation must address before transferring the asbestos certification. CSLB now indicates that it will continue to work with DOSH to resolve their concerns in order to transfer the program, eliminate the requirement that applicants apply to both agencies and allow asbestos contractors to enjoy “one-stop shopping.” In the meantime, CSLB intends to continue to issue disciplinary actions against contractors who violate asbestos laws, pursuant to investigations and findings of fact by DOSH.

**The Certification and Regulation of Contractors Involved in Hazardous Substance Removal.** Legislation enacted in 1986 (Statutes of 1986, Chapter 1443) gave CSLB responsibility for issuing a certification exam to contractors who engage in the removal or remedial action of specified hazardous substances (HAZ-MAT). In addition, CSLB has the authority to discipline contractors who perform this work without holding HAZ-MAT Certification.

The JLSRC questioned whether HAZ-MAT certification by CSLB was appropriate. It was unclear whether CSLB had the expertise or ability to investigate or take action against contractors who were involved in removal or remedial action of specified hazardous substances, and who violated provisions of the Health and Safety Code. It recommended to CSLB that it review this issue prior to the next sunset review. In response, CSLB noted that it did have the authority to discipline but not the expertise to determine whether a contractor has followed proper procedures in the removal or remedial action of HAZ-MAT substances.

Initially, the CSLB recommended that the responsibility for the HAZ-MAT Certification be transferred to the Department of Toxic Substances Control (DTSC) because the agency has the necessary expertise to regulate the program. However, DTSC opposed the recommendation because the agency has no investigative staff, no mechanism to process applications, and no method to test for the HAZ-MAT Certification. Currently, the DTSC holds property owners responsible for proper disposal procedures. Typically, the property owners hire registered engineers to develop disposal plans and oversee the disposal work. In cases of improper disposal of the hazardous materials in question, the DTSC notifies the owner that additional work is needed. The DTSC performs no other enforcement action.

After meeting with the DTSC and discussing these issues, CSLB reached the conclusion that the public interest would be better served by not transferring the HAZ-MAT Certification Program to DTSC. In a letter to DTSC, the Board indicated that there was no meaningful evidence to

indicate that a shift of responsibility is necessary at this time. The letter also indicated a commitment of both agencies to improve the flow of information, especially as it regarded hazardous sites identified by DTSC and those on the National Priorities List. However, there was no discussion of how DTSC's expertise could be utilized or what areas of responsibility each agency may have for violations of the Health and Safety Code.

**STAFF RECOMMENDATION:** *A sunset date should be placed on the asbestos certification program allowing the CSLB and DOSH sufficient opportunity to transfer responsibility of this program to DOSH. Both CSLB and DTSC should enter into a memorandum of understanding (MOU) to utilize the expertise of DTSC and define what areas of responsibility each agency may have for violations of the Health and Safety Code.*

**QUESTION #3 FOR THE BOARD:** *What action has the Board taken to determine whether or not it should continue to certify and regulate asbestos contractors or those involved in the removal or remedial action of hazardous substances, and what recommendations does it have?*

**ISSUE #4. THE BOARD HAS EVALUATED ITS CONTRACTORS EXAMINATIONS AS REQUESTED BY JLSRC, BUT HAS BEEN SLOW TO HAVE THESE EXAMINATIONS VALIDATED AND TO DETERMINE WHETHER THEIR WAIVERS FOR EXAMINATIONS ARE APPROPRIATE.**

**BACKGROUND:** In 1993, the Assembly Consumer Protection Committee reviewed the examinations provided to contractors by CSLB. It found that the passing rates for general contractors and specialty contractors was extremely high, allowing for incompetent contractors to practice. During the JLSRC review in 1996, it found that some passage rates were still relatively high. The JLSRC recommended that the CSLB conduct an independent evaluation and audit of its examinations and have the Department of Consumer Affairs Office of Examination Resources conduct occupational analyses of all of its examinations to ensure they are testing the appropriate job-related skills and are legally defensible. The JLSRC indicated that the occupational analyses and validation of these examinations should be initiated as soon as possible. It also requested the CSLB to determine if all of its examination waivers assure that the applicant has the requisite skills for licensure.

In September 1998, the CSLB began an independent audit of its examinations. This audit was completed in April 1999. The audit report indicated that, due to limited personnel resources, the CSLB has not been able to update the occupational analyses of many of its licensing examinations, and that many of these occupational analyses are more than thirteen years old. In addition, the audit found that the CSLB has not been able to replace overexposed test questions in the more frequently administered licensing examinations. It provided the Board a priority list for revising its examinations and a time frame for each. (It should be noted that the General (B) Building contractor examination has the highest need for revision.)

To address the issues raised in the audit report, the CSLB indicated that the Legislature has authorized the necessary funding for additional testing specialists. The Board has set a schedule for conducting occupational analyses and updating examinations for each classification over the next five years. The Board will maintain a schedule whereby a new occupational analysis for

each classification will be conducted every five years, subject to continuing availability of resources.

To minimize overexposure of test questions, the Board will utilize additional testing personnel to conduct periodic test question development workshops with subject matter experts. Maintaining an ongoing examination development schedule will enable the Board to increase the size of its question pools and to ensure that examinations remain consistent with current practice in between occupational analyses.

The CSLB has been aware of the problems associated with its examinations since 1993, and again in 1996. The JLSRC was very clear about moving ahead with validation (occupational analyses) of its examinations right away. Three years have now elapsed (and six years since the issue was first raised) and it is still unclear when these examinations will have occupational analyses performed on them and finally be validated. (The JLSRC has not received a copy of the Board's schedule.) The Board also indicated that it is still in the process of evaluating whether all waivers of its examinations are necessary.

The need to perform an occupational analysis is even more critical now because of recent court decisions. The courts have established that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of "job-relatedness." According to the U.S. District Court, this standard requires periodic validation of each examination a candidate is required to take. While the courts have not specified a standard for periodic review, a recent California case (*AMAE, et.al. vs. California Commission on Teacher Credentials*) has indicated that an analysis performed five or more years prior does not provide a sufficient defense to its validity. Therefore, it would appear as if courts may now invalidate an examination if an occupational analysis has not been performed within five years, and will find it unrelated to current knowledge, skills, abilities necessary for the profession.

**STAFF RECOMMENDATION:** *The CSLB should move forward with performing occupational analyses on its examinations without delay. It should ensure, based on the priority list provided within its audit report, that this is accomplished by October 1, 2001, and that the Board reports on its progress to the JLSRC at that time. It should also report to the JLSRC as to whether the waivers for its examinations should be eliminated.*

**QUESTION #4 FOR THE BOARD:** *Has an independent analysis been conducted on the examinations provided by the Board? Why the delay in having an occupational analysis performed on all tests given to contractors? Provide the JLSRC with a schedule for performing occupational analyses and having examinations validated. Should some or all examination waivers be eliminated?*

**ISSUE #5. CURRENT FORMS OF RESTITUTION PROVIDED TO CONSUMERS FOR FINANCIAL INJURY SUFFERED BY CONTRACTORS ARE INSUFFICIENT.**

**BACKGROUND:** When a contractor goes out of business, abandons a construction project, fails to perform on the contract, does not follow plans or specifications, or is involved in poor workmanship, the extent of meaningful consumer protection can be woefully lacking. Frequently, the homeowner's only recourse is to sue in small claims court or file a civil action against the contractor. The homeowner can also attempt to collect on the \$7500 surety bond required for all contractors. However, only a very small portion of overall damage claims made by consumers are ever paid out. (Pay out is generally between \$5 million and \$6 million. This is in stark contrast to the estimated contract value for complaints filed with the Board of between \$60 million and \$100 million annually.) The potential dollar amount for injury beyond the complaint amount is also considerable, but difficult to estimate.

The license bond has been called "bogus" because it offers so little protection to consumers in light of the magnitude of potential losses -- both because of its low amount and because of the limitations on making a claim and obtaining any payment from the surety. For pay out of a bond, the consumer has the burden of proving that an actual violation of the contractor's law has occurred. This means that the Board has pursued the case beyond the investigatory stage and filed an accusation against the contractor. This could take anywhere from 1 to 2 years, and in some instances longer. Also, multiple claimants on the bond reduce the overall amount available to the consumer, and secondary damage due to the contractor's poor workmanship or negligence on the work site is not covered.

There are a number of states that have adopted recovery funds to address the financial injury of consumers. To date, there are only about 15 states that have some form of recovery fund for consumers.

The JLSRC directed the Board to examine this issue and report back to the JLSRC before its next review. During this time the Board has considered several proposals and alternatives. In September 1998, the Registrar for the Board investigated the possible methods for providing consumers with a "safety net" and presented to the Board several proposals for them to consider. They included: (1) a "step-bonding" program based on the amount of the prime contract—the higher the amount of the contract, the higher the required bond; this would bring the existing bonding requirement in closer alignment with the potential loss; (2) a mandatory payment or performance bond—again tied to the value of the contract; and (3) the establishment of a recovery or restitution fund, funded by contractors as a requirement of licensure and maintained by the Board.

As indicated by the Center for Public Interest Law (CPIL), most Board members opposed all of the Registrar's proposals. Members opposed the bond recommendations, stating that they would act as a "barrier to entry" for new applicants and may not be acceptable to the legislature. The idea of a restitution fund financed by contractors' licensing fees and administered by CSLB was also not well received by the Board. Members noted that any increased costs imposed on contractors would be passed on to consumers. One Board member vehemently opposed the restitution fund idea, arguing that these types of funds reward consumers who do not act wisely during contract negotiations at the expense of consumers and contractors who do. He argued that **consumers should be responsible for protecting themselves**. (This member is no longer with the Board.)

After the CSLB rejected proposals presented by its Registrar, its staff commenced work on a variety of proposals to protect consumers and enable them to better protect themselves. It is now proposing what it titles as the “Home Improvement Protection Plan (HIPP) for the year 2000. The Board will outline this proposal during the hearing.

**QUESTION #5 FOR THE BOARD:** *Does the Board believe that current forms of restitution to the consumer are sufficient? What other alternatives should the state consider to protect the consumer against financial injury as a result of a contractor’s fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts? Please discuss the Board’s “Home Improvement Protection Plan” proposal.*

**ISSUE #6. ARE CONSUMERS BEING HARMED BY THE USE OF THE “MECHANICS LIEN” LAW AND SHOULD CHANGES BE MADE TO THE LAW TO PROTECT INNOCENT CONSUMERS AGAINST THE USE OF THIS LAW?**

**BACKGROUND:** There are several bills pending in the 1999/2000 legislative session concerning problems that may be associated with the use of the “mechanic’s lien” law. This law is intended to protect the interests of those who provide labor or materials toward the improvement of the property of others, known as a “work of improvement.” Section 3 of Article 14 of the California Constitution provides that “mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.” A mechanic’s lien is a claim against the real property on which the claimant has furnished labor or material, for the value of the labor done or material furnished. It gives the person who has furnished services, equipment, or material for a work of improvement a security interest in the improved real property that may be foreclosed upon if the claim is not paid. The major classifications of those who are entitled to a lien are contractors, subcontractors, material suppliers, artisans, and laborers. The lien must be recorded within the applicable time period specified by law, in the county in which the property is located. A contractor or material supplier is entitled to enforce a mechanic's lien against property only if he or she has given preliminary notice in accordance with the mechanic’s lien law. Compliance with the preliminary notice provision is strictly enforced.

Two notable bills, ACA 5 and AB 742, were introduced by Assemblymember Honda to make substantial changes to this law. ACA 5 would create an exception to the constitutional mechanic’s lien provision where the property is a single-family, owner-occupied dwelling that is the primary residence of the owner of the property if the owner has paid in full, to the person to whom the owner is contractually obligated to make payment, the amount owed by the owner for the labor bestowed and material furnished upon that property that would form the basis for the claim of lien. ACA 5's companion measure, AB 742, would prohibit non-prime contractors from recording a mechanic’s lien on such a dwelling where the owner has paid the prime contractor in full, and enable non-contractors who have not been paid to seek compensation through a new industry-supported recovery fund.

According to the author, ACA 5 and AB 742 seek to end “the victimization of homeowners, subcontractors, material suppliers, and laborers by unscrupulous prime contractors.” The legislative analyses of these bills describe the steps of this problem as follows: The homeowner enters into a contract with a prime contractor for a home improvement project. The prime contractor hires laborers and subcontractors, and purchases supplies from a material supplier. Upon completion of the project, the homeowner pays the prime contractor in full, but the prime contractor fails to pay the laborers, subcontractors, and material suppliers—who are now victims of the prime contractor’s breach of contract. Under current law, once the laborers, subcontractors, and materials suppliers have failed to be paid by the prime contractor, they have the right to collect from the homeowner via a mechanic’s lien. According to the author, this right to collect from the homeowner makes sense when the homeowner has not paid the prime contractor. However, it makes no sense if the homeowner has paid the contractor in full. According to the author, “it is important to recognize that the sole person at fault in this hypothetical is the unscrupulous prime contractor. There is no dispute that laborers, subcontractors, and material suppliers should be paid, but the homeowner shouldn’t be forced to pay twice.”

According to Assemblymember Honda, the challenge is to design a carefully tailored solution that will protect innocent homeowners, laborers, subcontractors, and material suppliers. ACA 5 would exempt certain classes of homeowners from otherwise applicable mechanic’s lien liability, while AB 742 would create the Contractor’s Default Recovery Fund (CDRF), an industry-supported fund to pay laborers, subcontractors, and material suppliers. AB 742 would also prohibit those who provide labor, materials, or services to an owner-occupied residential work of improvement (home improvement) pursuant to a contract entered into on and after January 1, 2000 from recording a lien upon that real property for the value of that labor, materials, or services if the owner has paid the prime contractor in full pursuant to a contract between the owner and the prime contractor. Laborers, subcontractors, and material suppliers who are victimized by a prime contractor would seek payment from the CDRF when the homeowner meet the conditions prescribed by ACA 5. This measure is currently a two-year bill located in the Assembly Judiciary Committee, and AB 742 is a two-year bill located on the inactive file in the Assembly.

Another bill by Senator Polanco, SB 1151, would amend Business and Professions Code section 7081.5, which requires a licensed contractor—prior to entering into a contract with an owner for home improvement or swimming pool construction work—to provide a notice regarding the state’s mechanic’s lien laws to the owner, owner’s agent, or the payer. Failure to provide the notice is grounds for disciplinary action. This bill would additionally require the contractor to obtain a written receipt which indicates that the person has received and read the notice; require the receipt to be maintained for inspection; and make failure to provide the notice and obtain the receipt grounds for disciplinary action. SB 1151 is currently a two-year bill located in the Assembly Consumer Protection Committee.

A bill by Assemblymember Floyd, AB 1642, would provide that the failure of a contractor, or of his/her agent or officer, to pay monies when due for materials purchased or services rendered in connection with his/her operations as a contractor for residential home improvement work, when he/she has the capacity to pay or has received funds for that particular work, project, or operation that were sufficient to pay for the services rendered or materials purchased, and if the failure to pay results in a mechanic’s lien being filed against residential property for that work, shall result

in the automatic suspension of the contractor's license. This bill would require the Registrar of Contractors to notify the licensee of this suspension in writing, and permit the licensee to contest the suspension within 15 days after service of this notice by written notice to the Registrar. AB 1642 would also create a rebuttable presumption that the failure of a contractor to pay for any goods or services rendered in connection with a contract, when he/she has received sufficient funds for that particular work, is a willful and deliberate violation for purposes of these provisions. AB 1642 is currently a two-year bill located in the Assembly Consumer Protection Committee.

A bill by Assemblymember Margett, AB 171, would amend section 3258.5 of the Civil Code, which requires the owner of a work of a public or private improvement to sign and verify any notice of completion or notice of cessation of work, and that the notice be recorded in the office of the county recorder of the county in which the site is located. This bill would require the owner of a public or private work of improvement to notify, by registered or certified mail, the

original contractor and any claimant who has provided a preliminary 20-day notice that a notice of completion or notice of cessation has been recorded, within ten days of recording that notice of completion or notice of cessation. Failure to give notice would extend the period of time in which the contractor or claimant may file a mechanic's lien or stop notice to 90 days (which would be the sole liability incurred for failure to give notice). The bill would also define an "owner" for these purposes as a person who has an interest in real property, or his/her successor in interest, but would exclude a person who occupies the real property as his or her personal residence.

**QUESTION #6 FOR THE BOARD:** *Should there be any changes to the "mechanics lien" law? Has the Board taken any position on the aforementioned legislation? Has the Board investigated the extent to which contractors have harmed consumers by the use of the mechanic lien law?*

**ISSUE #7. IT IS UNCLEAR WHAT ACTION THE CSLB TAKES ONCE A CIVIL LAWSUIT HAS BEEN FILED AGAINST A CONTRACTOR OR A SETTLEMENT AGREEMENT IS REACHED BETWEEN THE CONSUMER AND THE CONTRACTOR.**

**BACKGROUND:** Some consumers have complained that the Board declines to take independent or additional action when a consumer files civil suit against a licensee, and will actually close complaints pending the outcome of court action. They have also indicated that the Board will not pursue any action against a contractor upon the settlement of a civil case, and have cited a 1948 court case, *Terminix Co. v. Contractors State License Board*, for taking that position.

**QUESTION #7 FOR THE BOARD:** *Does the Board take immediate action against a licensee who violates the Contractors' License Law, independent of whether or not the consumer files a lawsuit or whether a settlement agreement in the lawsuit has been reached? What application does the Terminix case have to actions taken by the Board against a licensee?*



**ISSUE #8. SHOULD THE BOARD MAKE ANY IMPROVEMENTS TO ITS VERIFICATION PROGRAM OF APPLICATIONS AND INCLUDE A FINGERPRINT CHECK PROGRAM TO CHECK PRIOR CRIMINAL HISTORY OF APPLICANTS?**

**BACKGROUND:** During hearings in 1993 by the Assembly Consumer Protection Committee, the Board was criticized for only investigating about 3% of all applications as required by law. In response to this, the Board initiated a program whereby 50% of applications were verified for work experience, or other related information, to determine if there was a greater number of falsifications and ascertain whether there was a need to increase the number of investigations. (The eventual goal of this program was to verify 100% of the applications.)

The Board discontinued this program due to lack of funding. (A BCP to continue this program was denied by the Department of Finance. They argued that there was only an 8% problem and the cost did not justify continuing with this program.) The Board recommended at that time continuing with this program and would like eventually to do 100% verification rather than just 50%. It is unknown whether the Board still believes a 100% verification program is necessary.

Other boards and the Department have initiated a fingerprint check program to also verify applications and to check on potential for a prior criminal record concerning licensees. It is unknown whether the Board has considered using a fingerprint check program, or whether it would be too costly.

**QUESTION #8 FOR THE BOARD:** *Should the process by which the Board reviews, verifies and investigates applications for licensure be improved, along with the addition of a fingerprint check program similar to other Boards and the Department?*

**ISSUE #9. SHOULD THE “SUBSTANTIAL RELATIONSHIP” CRITERIA ON CRIMINAL CONVICTIONS BE EXPANDED AS IT APPLIES TO HOME IMPROVEMENT CONTRACTORS AND SALESPERSONS?**

**BACKGROUND:** Business and Professions Code sections 475 and 490 permit the Board to discipline or deny a contractor’s license if the licensee or applicant has been convicted of a crime which is “substantially related to the qualifications, functions, or duties” of a contractor. Section 868, Title 16 of the CCR, sets forth the kinds of crimes that are deemed “substantially related” for purposes of license discipline or denial, including submitting false vouchers to obtain construction loan funds and not using the funds for the purpose for which the claim was submitted; willfully rebating to or on behalf of anyone contracting with a licensee any part of money tendered the licensee for the provision of services, labor, materials, or equipment; and theft of building materials or equipment for use on a construction project.

At a Licensing Committee roundtable meeting on April 1 of this year, and at CSLB’s April 21 meeting, Board staff discussed the potential expansion of section 868 as it applies to home improvement contractors and salespersons. Staff indicated that the section’s emphasis on

construction-related offenses is too narrow, and seeks to include all felonies and other criminal acts involving fraud, misrepresentation, and/or dishonesty as “substantially related” to the duties of a contractor.

The Center for Public Interest Law (CPIL), which observed this meeting, indicated that during the discussion concerning this issue, some Board members made a “double jeopardy”-like argument, expressing the view that once a contractor has “paid his/her debt” for a crime, it is unfair for a licensing board to then withhold or discipline the licensee. Staff noted that the primary purpose of the Board is to protect consumers, including future consumers of CSLB licensees, from contractors who are negligent, dishonest, or dangerous. This purpose requires the Board to look beyond the immediate duties of a contractor to situations in which a contractor may find him/herself, and protect consumers from contractors who cannot handle themselves appropriately in those situations. Because home improvement contractors work within consumers’ personal residences and are exposed to the belongings of the consumer, excluding contractors who have committed crimes of moral turpitude may be in the best interests of consumers.

Staff also noted that section 869, Title 16 of the CCR, which sets forth rehabilitation criteria, should be amended, and that the amount of time that has elapsed between the conviction and license application or renewal (and the presence or absence of subsequent bad acts during that time period) should be specified as a critical factor in determining whether a licensee with a criminal history has rehabilitated him/herself. Due to the hesitance of the Board members, staff promised to study these issues further and raise them at a future meeting.

**QUESTION #9 FOR THE BOARD:** *Should the “substantial relationship” criteria on criminal convictions be expanded as it applies to home improvement contractors and salespersons?*

#### **ISSUE #10. SHOULD THE BOARD IMPROVE OR BROADEN ITS DISCLOSURE POLICIES CONCERNING LICENSED CONTRACTORS?**

**BACKGROUND:** Consumers have complained that they are misled by information provided by the Board concerning the status of a contractor’s license. That the Board’s statement that a licensee is in good standing is no guarantee that there aren’t past civil or criminal judgments against the licensee, or that they have repeated complaints pending, or have been involved in prior arbitration proceedings, or stipulated or settlement agreements. They have indicated that the Board should clearly advise them that they are only providing limited information concerning the status and background of the contractor, or disclose all relevant information concerning the licensee so they can make informed decisions about hiring a contractor.

**QUESTION #10 FOR THE BOARD:** *Should the Board broaden or improve licensee information that it makes available to the public? Should consumers receive information on contractors who have repeated complaints, or when there is an arbitration award (whether or not the contractor has paid the award), a stipulation or settlement agreement, or a civil or criminal judgment?*

**ISSUE #11. THE CSLB IS REENGINEERING ITS ENTIRE COMPLAINT AND INVESTIGATION PROCESSES TO SHORTEN THE TIME FRAME FOR PROCESSING COMPLAINTS AND THE COMPLETION OF INVESTIGATIONS. HOWEVER, THE ACTUAL IMPACT AND RESULTS OF THESE CHANGES ARE STILL UNKNOWN.**

**BACKGROUND:** During the prior review of CSLB, the JLSRC had commented that the Board had made significant efforts in attempting to shorten the time frame for the handling of complaints and investigations. It was indicated that about 60% of complainants surveyed by the Board believe that their cases were processed in a timely fashion. However, the standard time frame for the handling of complaints is still six months, and a substantial number of investigations take from one to two years to complete before any legal action is taken. The JLSRC recommended that the CSLB should attempt to reengineer this process to shorten the time frame for processing of complaints and completing investigations.

In 1998, the Board's Registrar introduced a plan to completely restructure CSLB's intake and investigation process. Essentially, the plan called for the closure of fifteen of the Board's district offices; in their place, CSLB would establish two Intake-Mediation Centers and two Investigation Centers. The centers would be located in San Diego, Buena Park, Oakland, and Sacramento. The Board's investigative staff would be expanded and equipped with mobile offices, including a laptop computer, modem, cellular phone, and fax machine. Complaints would come in through a toll-free number to a central office (Sacramento), where they would be triaged and downloaded daily to the appropriate field officer. The officer would then follow up on the complaint by phone and in person. The Registrar's plan was to use the money saved by consolidating the physical plants to increase and properly equip the investigative staff. It was believed that this increase in staff numbers and ability would increase effectiveness and reduce the time from case filing to disposition.

The CSLB approved the triage concept, but opposed the overall restructuring plan. They argued that licensees prefer the convenience and familiarity of having access to CSLB via a local office, and several members voiced their intent to oppose any restructuring plan that includes closure of local offices. However, in January 1999, the Board approved staff's proposal to implement a scaled-back version of the restructuring program as a pilot project initially covering four Southern California Counties -- Los Angeles, Orange County, Riverside and San Bernardino.

It is unknown what the results and impact of the reengineering project may have on the overall effectiveness and efficiency of the CLSB complaint and investigative processes. The Board indicates that through centralized initial processing, cases requiring investigation will be getting to investigators sooner and will be assigned to the most appropriate resources. It also anticipates improved performance by investigators and increased legal actions.

The CLSB had indicated that it will review the results of the pilot program at its January 2000 meeting with an eye toward statewide implementation.

**STAFF RECOMMENDATION:** *The CSLB should report the initial results of its pilot project to the JLSRC and the Department by February 2000.*

**QUESTION #11 FOR THE BOARD:** *Has the Board been able to reduce the time frame for processing complaints and completing investigations. Please explain the pilot project that the Board is implementing to re-engineer its complaint and investigation processes and how it will improve complaint processing and investigation of those complaints for consumers. Does this include closing down district offices? If so, then please provide information concerning the following:*

- a) What offices have been closed, which ones are still being paid for, and for how long?*
- b) What other closures are anticipated?*
- c) What impact will closures have on consumers? How will consumers file complaints and contact the Board in areas where offices have been closed?*
- d) What impact will closures have on employees, and the Board and its licensees?*
- e) Is the Board and Department fully cognizant of the scope and impact of the “pilot project” and actions taken so far by Board staff?*

**ISSUE #12. IT IS UNCLEAR WHETHER THE BOARD IS FOCUSING ENOUGH OF ITS RESOURCES ON VIOLATIONS OF THE CONTRACTORS ACT BY “LICENSED” CONTRACTORS WHEN COMPARED TO ITS EFFORTS TO “ERADICATE UNLICENSED CONTRACTORS.”**

**BACKGROUND:** The CSLB has indicated that it continues to give the “eradication of illegal, unlicensed contractors a very high priority.” That those individuals cause a disproportionate amount of damage to the public because they act without obtaining permits, often demand cash for payment, and are difficult, if not impossible, to trace when inevitable problems occur. As part of this enforcement activity, several geographical areas were targeted by concentrating enforcement staff on stings and sweeps. Stings and sweeps are usually done in partnership with local media. Such exposure, as stated by the Board, helps educate consumers on the dangers of hiring unlicensed contractors, and encourages the unlicensed to become licensed.

The Board also stated it has measured unlicensed activity levels before and after the stings to assess their effectiveness. The results showed that the number of advertisements by unlicensed individuals declined significantly in the months following these actions. In fact, over the last few years the number of reactive complaints against non-licensees has declined in direct proportion to the proactive work done by the enforcement program.

The Board recently supported a measure, AB 952 (Wiggins), and sponsored by the State Building and Trade Council, to create a major fraud investigation unit within CSLB to go after licensed and unlicensed activity. The cost of this unit would have been \$750,000. The Governor vetoed this bill.

There has been some criticism leveled at the Board that they spend a disproportionate amount of time and resources going after unlicensed activity and not enough on dealing with violations of the Contractor’s Act by licensed contractors when complaints are filed with the Board.

**QUESTION #12 FOR THE BOARD:** *Please indicate what portion of enforcement actions by the Board over the past four years involve unlicensed contractors versus licensed contractors, and what portion of complaints “initiated by the Board” over the past four years involve unlicensed contractors versus licensed contractors. What portion of the Board’s enforcement Costs over the past four years were spent on “eradication of illegal, unlicensed contractors?” Provide the results that the Board has compiled to measure the effectiveness of its sting and sweep operations to curtail unlicensed activity.*

**ISSUE #13. IT DOES NOT APPEAR AS IF THE CSLB HAS BEEN ABLE TO INCREASE THE REPORTING OF VIOLATIONS BY LOCAL BUILDING OFFICIALS.**

**BACKGROUND:** When the JLSRC reviewed CSLB in 1996, it noted that of 30,000 complaints filed with CSLB, only 127 were filed by state or local agencies. JLSRC indicated that local building officials are considered to be in the best position to discover and report incompetent or unlicensed contractors. The Board thinks that this lack of referred complaints is due in part to a lack of awareness on the part of the local agencies of laws pertaining to contractors.

The JLSRC recommended that CSLB should implement a program to work more closely with local building officials and the State Buildings Standards Commission to provide ongoing training and information to building officials concerning potential violations of the Contractor’s Act . It was intended that this program and effort by the CSLB would improve reporting of violations of the Contractor’s Act.

In November 1998, the Board held a roundtable meeting with the California Building Officials (CALBO) leadership in Riverside to discuss better communications and how the Board could better serve Building Officials. The meeting resulted in CSLB putting together a pamphlet of frequently asked questions for Building Officials. (This pamphlet was put on the Board’s website. The roundtable discussion also resulted in a cooperative effort between the Board and CALBO to jointly sponsor legislation that will make it easier for building officials to verify contractors’ workers’ compensation insurance.

The Board indicates that it is actively working with the management of both CALBO and International Conference of Building Officials, as well as with local building departments, in order to provide better building code enforcement. CSLB enforcement staff in various geographical locations throughout the state have also been attending the local building official meetings on a quarterly basis to maintain this liaison work.

This increased cooperation is also listed as an objective in the Board’s 1999/2000 Strategic Plan. To meet this objective, roundtable discussions have been held in various locations throughout the state, in conjunction with other Board meetings, to identify ways in which CSLB and CALBO members can cooperate to provide better enforcement of building codes. In addition, letters were sent by CSLB enforcement supervisors throughout the state to their local building departments detailing areas of mutual assistance, such as direct telephone numbers to contact CSLB staff, waiving of fees for documents and witness appearances by both agencies, attending the other agency’s staff meetings when requested and providing assistance with contractors who ignore

local requirements. The CSLB has indicated that their enforcement staff, as well as the Board as a whole, will continue to build on this relationship in order to provide more effective regulation of contractors who do not comply with local codes.

Although the Board has made significant efforts to work more closely with building officials, reporting of actual violations of the Contractor's Act by local agencies are still low. In FY 1998/99, for example, only 71 complaints were filed by local agencies, out of a total of 26,076 complaints filed with CSLB.

**QUESTION #13 FOR THE BOARD:** *Has the Board been able to improve on the reporting of violations of the Contractors' License Law from local building officials?*

#### **ISSUE #14. SHOULD THE CONTRACTOR'S STATE LICENSE BOARD BE CONTINUED, OR SHOULD ITS RESPONSIBILITIES BE TRANSFERRED TO THE DEPARTMENT OF CONSUMER AFFAIRS?**

**BACKGROUND:** In 1993, the Assembly Consumer Protection Committee held two hearings on how the Board handled many of its most important functions, such as screening contractor license applications, responding to consumer complaints, and revoking licenses when warranted. The Committee released a report in which it charged that the Board had been "critically deficient" in protecting consumers from unscrupulous or unqualified contractors. The Committee directed the Board to make immediate and long-term changes to address these problem areas.

During the review of CSLB in 1996, the JLSRC found that there were steps which the Board had taken over those three years to deal with some of the major problem areas identified. The JLSRC and the Administration concurred that contractors should continue to be regulated, and that CSLB is the appropriate entity to engage in that regulation. Inherent in that conclusion was the belief that the Board was performing its administrative responsibilities well or better than any reasonable alternative, and that transfer of the program to be administered directly by the Department of Consumer Affairs, without an appointed Board, was not warranted.

However, the JLSRC did identify a number of issues and problem areas for the Board to deal with, and accordingly made recommendations for the Board to implement. The Board has made attempts to deal with some of these issues, but there are still several issues which remain unresolved. Whether or not to continue with the regulation of contractors by the CSLB, rather than having the Department administer this program, would depend on how responsive members of the JLSRC believe this Board has been to prior issues and concerns raised by this Committee, and how committed it will be to resolve current issues and problem areas identified in this paper.

Of primary concern is the confidence which consumers have in this Board to deal with their complaints in the future. Although this is difficult to assess, the Board has at least conducted a consumer satisfaction survey to monitor the effectiveness of its activities since 1993. (It should be noted that it was the first board to do so. This survey has been used as a model and is required by the JLSRC for every board reviewed.) Based on the results of this survey, CSLB still has some improvements to make in dealing with consumer complaints. In 1998, only about 64 percent of complainants to the Board were satisfied with the service provided by the Board.

However, this is an improvement from prior years and is certainly in stark contrast to health-related boards which usually have about a 30 to 40 percent approval rate.

The Board should summarize the efforts it has made to improve its overall effectiveness and efficiency to operate more in the public interest. It should also indicate its future commitment to resolve particular issues identified by this Committee.

**QUESTION #14 FOR THE BOARD:** *Why should this Board be continued? Summarize what changes have been made to the current regulatory program since its last review to improve its overall effectiveness and efficiency so that it may operate more in the public interest. Why couldn't a bureau under the Director of the Department of Consumer Affairs, with an advisory committee from the profession, administer this licensing program more effectively and efficiently than the current Board?*

## **PART 4.**

### **Contractors State License Board**

#### **BOARD'S RESPONSE TO ISSUES AND RECOMMENDATIONS FROM 1999/2000 SUNSET REVIEW**

#### **RESPONSE TO BACKGROUND PAPER FOR NOVEMBER 1999 PUBLIC HEARING**

##### **Overview of the Current Regulatory Program**

The mission of the Contractors State License Board is to protect consumers by regulating the construction industry through policies that promote the health, safety and general welfare of the public in matters relating to construction. The Board will accomplish this by ensuring that:

- 1) Construction is performed in a safe, competent and professional manner through licensing of contractors and the enforcement of licensing laws;
- 2) Resolution is provided for disputes that arise from construction activities; and
- 3) Consumers are educated so they can make informed choices.

Contractors have been licensed in California since 1929. There are currently over 280,000 contractors and home improvement salespersons. The Board regulates 41 license classifications and 3 certifications, under which members of the construction industry practice their trades and crafts.

To become a contractor, one must be at least 18 years of age, have four years of journey-level work experience in the trade, and pass an examination that consists of two parts: a trade test and a law and business examination. The exams are administered by computer daily at eight testing centers throughout the state. The Board has begun the process of revising all of its exams; the process will be completed in the next five years.

The Board spends almost 60 percent of its budget on enforcement. Of the 26,000 complaints the Board received last fiscal year, 56 percent were referred to investigation, 46 percent were closed through mediation, and 29 percent of those referred to investigation resulted in formal disciplinary action. CSLB revoked 791 licenses and suspended an additional 791.

CSLB also has an aggressive consumer outreach and education program. It reaches its audience through a public awareness campaign that includes radio and newspaper advertisements,



consumer publications distributed at Home & Garden and trade shows, and community-based consumer forums throughout the state.

## **Board Response to Preliminary Staff Recommendations and Questions of the Committee**

1. *What has the Board done to consolidate, redefine or eliminate some of the “specialty classifications” for contractors? Should the Board adopt a “merit badge” plan to certify contractors in specialty areas?*

### **Specialty Classifications**

The specialty license classification review process undertaken by the Board included several public hearings, a survey, CSLB data analysis, and a study. Subsequent to the last Sunset Review hearings, the Board appointed a task force to study the license classification system and make recommendations to the Board regarding consolidating, redefining or eliminating some of the specialty classifications. The members of the task force were: Tim Strader, Chair; Nina Tate, Board Member; Henry Iverson, Cal Pipe Trades Council; Beverly Carr, National Electrical Contractors Association; Linda Heetland, Heetland Group; Sam Abdulaziz, attorney; Roger Fiske, California Landscape Contractors Association; Cyndi Marshall, Sheet Metal Air Conditioning Contractors Association; Roger Lighthard, The Lighthard Corporation; David Jones, Associated General Contractors; Robert Rivinius, California Building Industry Association; Professor Rovane Younger, California State University Chico; Raymond Huff, Los Angeles Unified School District; and Johnny Zamrzla, Western Pacific Roofing.

The task force sent a survey to over 200 individuals, contractors and associations. (A copy of the mailing list is readily available.) Those who responded to the survey expressed widespread concern at the prospect of deregulating the specialty license classes. The participants cited a variety of potential health and safety risks to consumers and workers if demonstrated competency standards for specialty trades did not exist.

After several public meetings (for which individuals, consumers and associations had received notices), the task force made the following recommendations, all of which were adopted by the Board:

- ¥ Eliminate the C-14 (Metal Roofing) classification and merge the scope of work into the C-39 (Roofing), C-43 (Sheet Metal) and C-51 (Structural Steel) classifications in accordance with industry applications and existing Board regulations.
- ¥ Merge the C-6 (Cabinet & Millwork) classification into the C-5 (Carpentry) classification.
- ¥ Merge the C-26 (Lathing) classification into the C-35 (Plastering) classification.

After considering the results of the health and safety survey, public testimony, and potential financial risks to consumers, the Board determined it was not in the best interest of consumers to eliminate any other specialty license classifications. CSLB's review of the licensing system resulted in a move to restructure about 25 percent of its classification, certification and registration programs.

All of the regulatory changes necessary to effect the above improvements have been completed.

### **Merit Badges for Specialty Contractors**

Under the original "merit badge" proposal, the Board looked for ways to identify contractors who demonstrated above-average competence in their classifications. The Board gave a great deal of attention to this proposal last year. Eventually, the discussion identified two areas where a merit approach would be helpful.

The first approach would identify contractors who sought advanced training in their specialty. For example, a roofing contractor might attend classes on low slope roofing. An electrician might seek a certification in spa installation.

The second approach would identify contractors who demonstrate sound financial practices, i.e., contractors who attend training in fiscal responsibility, carry general liability insurance, and pay subcontractors and material suppliers in a timely manner, etc. The Board decided to focus efforts on fiscal responsibility rather than specialty competence.

The Board's Home Improvement Protection Plan (HIPP 2000), a consumer protection proposal, actually arose as a result of merit badge discussions.

2. ***Should there be any changes to the registration of home improvement salespersons? Has the CSLB investigated the extent to which consumers are harmed by salespersons or contractors who use retail installment contracts for home improvements that create a security interest on the homeowner's property? What action is the CSLB taking concerning this problem?***

In FY 1995/96 the Board looked into repealing the home improvement salesperson registration program. CSLB would still have the authority to take disciplinary action against contractors who used salespersons that violated contractor license law. This proposal was dropped, however, due to opposition from a number of consumer groups. The CSLB has no plans to revisit the issue; in fact, the Board has adopted a legislative proposal to require fingerprinting for all licensees, including home improvement sales registrants. The purpose of the proposal is to identify individuals who represent a potential risk to homeowners, and take appropriate preventive measures.

The CSLB does not know the extent to which consumers are harmed by contractors or salespersons who use retail installment home improvement contracts that create a security interest on property. As the Consumers Union noted in their 1995 report Dirty Deeds: Abuses and Fraudulent Practices in California's Home Equity Market, it is difficult for state agencies to track home equity fraud due to the number of agencies that have jurisdiction. Those agencies include the Department of Corporations, the Department of Real Estate and the CSLB. However, CSLB does aggressively pursue those who violate home improvement laws. For example, the Board took action to obtain a restraining order and subsequently revoke the license of Century Home Improvements, a licensee who used secured home improvement loans to bilk vulnerable elderly homeowners for approximately \$100,000 in faulty construction.

CSLB is hopeful that recent legislative changes will better protect consumers. The changes prohibit retail installment contracts from taking a security interest for home improvement loans under \$5,000 and prohibit institutions from writing these types of contracts for individuals 65 years of age or older. Regardless, CSLB will continue to aggressively pursue individuals who fraudulently use retail installment contracts.

3. ***What action has the Board taken to determine whether or not it should continue to certify and regulate asbestos contractors or those involved in the removal or remedial action of hazardous substances, and what recommendations does it have?***

### **Certification & Regulation of Asbestos Contractors**

While the CSLB has the authority to discipline contractors who violate the laws pertaining to asbestos abatement, the CSLB staff does not have the expertise to determine whether the actions of a contractor have resulted in a relevant violation. For such cases, the CSLB must rely on the investigations and testimonies of experts from the Department of Occupational Safety and Health (DOSH) or similarly qualified local officials.

Consequently, the Board concluded that it would be more appropriate for the asbestos certification program to be administered by DOSH, and in April of 1997 approved a resolution to develop a legislative proposal aimed at transferring the program to DOSH. The proposed language was forwarded to DOSH staff, who have raised some issues that must be addressed. CSLB will continue to work with DOSH to resolve their concerns in order to transfer the program, eliminate the requirement that applicants apply to both agencies, and allow asbestos contractors to enjoy "one-stop shopping." CSLB intends to continue issuing disciplinary actions against contractors who violate asbestos laws, pursuant to investigations and findings of fact by DOSH.

## **Certification & Regulation of Hazardous Substances Removal**

The Board recommends it continue to administer this program because the Department of Toxic Substances Control (DTSC) has no investigative staff, no mechanism to process applications, and no method to test for the HAZ-MAT certification. The public interest would not be served by transferring the HAZ-MAT certification at this time. This was noted in a letter dated June 16, 1998, from the Registrar to the DTSC which was included in the appendix to the Sunset Review report.

4. ***Has an independent analysis been conducted on the examinations provided by the Board? Why the delay in having an occupational analysis performed on all tests given to contractors? Provide the JLSRC with a schedule for performing occupational analyses and having examinations validated. Should some or all examination waivers be eliminated?***

### **Examination Analysis**

The Board contracted with Cooperative Personnel Services (CPS) to conduct an independent analysis of its examination programs, which was completed in April 1999.

The CPS Auditor concluded that CSLB's examinations consistently met or exceeded professional standards for the development and validation of licensing examinations. The auditor observed that due to limited resources, the Board had been unable to update the occupational analyses for many of its licensing examinations. In addition, the Board had been unable to replace "overexposed" test questions.

In response to the issues raised in the audit report, the Board obtained additional funding and testing personnel. A strategic plan was developed for conducting occupational analyses, updating examinations, and increasing the size of question pools over the next five years. The table attached as Appendix I provides the schedule for completion of occupational analyses for each examination. Examinations are prioritized based on the need for revision as indicated in the audit report.

As shown in the table, the occupational analyses for exams with the highest, high, and moderately high need for revision are scheduled for completion by June 2001. Neither the CSLB, nor any other state or private agency has the resources to perform occupational analyses for all of the Board's examinations simultaneously.

Currently, CSLB staff is conducting four occupational analyses, and five are being performed under fee-for-service contracts with the Department of Consumer Affairs (DCA) and the State Personnel Board (SPB). Both DCA and SPB indicated they were taking on the maximum number of projects they could accommodate for fiscal year 1999/2000. Through the bid process, the Board has also selected an outside vendor

(International Conference of Building Officials) to conduct an additional twelve occupational analyses by June 2001.

In FY 2000/2001, the Board expects to contract with DCA and SPB for an additional six occupational analyses. Board staff will also conduct two occupational analyses and will concentrate on development of new examinations based on occupational analyses completed the previous year. Through the bid process, the Board will select an outside vendor for the remaining seven occupational analyses, to be completed by June 2002.

Since the last Sunset Review, the Board has completed occupational analyses for six of its examinations, and new exams are in place for five of the six. The Board submitted a budget change proposal (BCP) in December 1998 to fund testing personnel and occupational analyses. Since receiving funding in July 1999, the Board has hired the limited-term staff provided for in the BCP, initiated fee-for-service contracts with DCA and SPB, and selected an outside vendor through the bid process.

### **Examination Waivers**

The Contractors State License Board has the authority to waive examinations for some applicants for new licenses. Typically, those receiving waivers already have or have had a contractor's license. Regardless, some worry that the waiver process exposes the public to unqualified licensees. We at the board share their concern and strive to ensure that those going through the waiver process are as qualified as those who follow the examination route to licensure.

But, diligence alone is not enough—there must be evidence that the diligence paid off. CSLB commissioned Cooperative Personnel Services (CPS) to analyze its data to find whether those receiving a waiver pose a greater public threat. The answer is no.

The evidence comes from two comparisons of those who received a waiver to those who did not. Looking at everyone who received a license in the last 5 years (about 128,000 licensees), CPS compared the complaint experience of the two groups. The complaint experience of both groups is identical—88 percent of those who took an exam and 88 percent of those whose examinations were waived had no complaints. Of the remaining 12 percent who had complaints, most (more than 60 percent) had only one complaint, regardless of their path to licensure.

The clear conclusion is what common sense tells us—a few bad apples account for nearly all consumer harms. It is virtually impossible to create tests that discriminate perfectly—everyone who passes the test possesses the requisite skills. We take comfort in finding that 19 out of 20 contractors have the contracting and business skills to succeed without harming consumers. Still more comforting is the finding that the examination and waiver processes maintain the same quality.

## **5. *Does the Board believe that current forms of restitution to the consumer are***

*sufficient? What other alternatives should the state consider to protect the consumer against financial injury as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts? Please discuss the Board's "Home Improvement Protection Plan" proposal.*

The methods of restitution currently available to consumers are described in detail on pages 39–40 of the Sunset Review Report. The Board does not believe that the current forms of restitution are sufficient to compensate consumers when they are financially injured by licensed contractors. Over the past few years, the Board has continued to examine forms of restitution including:

- ¥ **Contractor's license bond**—The Board continues to believe that the bond is an inadequate remedy. Over the years the Board has proposed a number of solutions including increasing the penal sum and revising the “pay-out” criteria.
- ¥ **Creating a new bond for home improvement work**—The Board's staff is working with group of surety companies to explore whether a “homeowner's bond” should be developed to supplement the contractor's license bond.
- ¥ **Creating a recovery fund**—As part of the Board's analysis of Assemblyman Honda's proposed mechanics' lien recovery fund, the Board examined other states' recovery funds and found no successful programs. Preliminary research indicates that even those funds that appeared to be working adequately in other states would be very difficult to adapt to the Constitutional requirements of California's mechanics' lien laws.
- ¥ **Creating alternatives to liens**—The HIPP proposal creates an alternative to mechanics' liens by allowing unpaid material suppliers to be awarded an additional 2 percent penalty for each month the contractor fails to pay them. This alternative is only useful, however, if the contractor has assets available.
- ¥ **Creating consumer insurance**—In addition, staff is committed to working with Assemblyman Honda on a home improvement insurance strategy similar to flight insurance.

Many are concerned that the restitution solutions listed above would require 95 percent of CSLB's competent, financially sound contractors to carry unneeded protection to make a little more protection available for the 5 percent who are a problem. Also, the amount of money generated for restitution would not be adequate to address the problem.

Instead of restitution, which tries to help consumers after the damage is done, the Board offers a preventive approach in its HIPP 2000 proposal below.

### **HIPP 2000**

**Criminal conviction**—The Board has an obligation to ensure that licensed contractors meet specific qualifications. At present, the Board has no structured means of acquiring information about its licensees' criminal convictions. The Board proposes fingerprinting for all licensees.

**Make consumer information consistent**—Make information consistent and repetitive in CSLB's public information program, contractors' advertising, the bid package, the contract itself, the billing documents and a possible lien claimant's preliminary notice.

**Public information.** Create new publications and revise existing publications to provide consumers with improved information on liens and commercial general liability insurance.

**Contractor advertising.** Require contractors who advertise that they have insurance to specify the kind of insurance, i.e., workers' compensation insurance and/or contractors' general liability insurance.

**The bid package.** Require contractors to provide helpful information either in the bid package or prior to forming a contract, so homeowners have information as early as possible in the transaction.

**The contract.** Require contractors to include information on down payment limitations, commercial general liability insurance, liens, preliminary notice and ways of preventing financial injury.

**The billing statement.** The billing statement should include a notice that reiterates the importance of paying only for work already performed, and describes who should be paid from the payment and the process of conditional and unconditional releases.

**Penalties for failure to provide a required notice**—Provide more stringent enforcement of notice requirements. Specify that if a required notice was not given, and the type of harm the notice was designed to prevent occurs, that harm will be presumed to have been intentional.

**Penalty in civil court for unpaid material suppliers**—Create the same protection for material suppliers and equipment renters as is given to subcontractors under B&P section 7108.5 by providing a 2 percent per month penalty for a contractor's failure to pay when paid.

6. *Should there be any changes to the “mechanics’ lien” law? Has the Board taken any position on the aforementioned legislation? Has the Board investigated the extent to which contractors have harmed consumers by the use of the mechanics’ lien law?*

### **Changes to the Law**

Because California’s mechanics’ lien law is set in the Constitution, changing the law itself is a complicated matter. Some changes can, however, be made in the process that allows a mechanics’ lien to attach to real property. The Board will continue to work with interested parties, including the Law Revision Commission, which met on November 30, 1999, on this subject to determine if and what changes are needed to the law.

### **Board Position on Legislation**

The Board took a “watch” position on AB 742 by Assemblyman Honda, AB 1642 by Assemblyman Floyd and AB 171 by Assemblyman Margett. All three bills involve changes to mechanics’ lien law, a complex legal area currently being scrutinized by the Law Revision Commission. The Board directed staff to work with Assemblymen Honda and Floyd to create solutions that help consumers.

As to SB 1151, the Board worked with Senator Polanco’s staff and the bill’s sponsor, Surety Company of the Pacific, to revise the “Notice to Owner” language to make it more useful to consumers. A draft of the Board’s suggested language, retitled “Mechanics’ Lien Warning,” is part of the HIPP 2000.

### **Harm Caused by Mechanics’ Liens**

The Board is currently running a “Closed Complaint” study to determine, among other things, the extent that mechanics’ lien claims affect consumers. This study should be completed by the end of the year. However, staff does not expect much information about mechanics’ liens, since such claims often come only tangentially to the Board. A consumer pays the contractor, but the contractor fails to pay the subcontractor or material supplier. The subcontractor or material supplier then pursues his or her lien rights against the consumer. If the original contractor has filed for bankruptcy, or has abandoned the job and/or the profession, CSLB may find grounds to take the contractor’s license, but there is nothing else CSLB or the consumer can do—the contractor may be judgement-proof. The lien remains on the property until the consumer pays the lien claimant or manages to get the lien removed. Many of these situations are never even reported to the Board.

In legislation proposed as part of HIPP 2000, the Board has created some new means of informing consumers about the danger of liens and ways to protect against them. The Board is also working on a publication describing lien prevention, “Don’t Lien On Me.”

7. *Does the Board take immediate action against a licensee who violates the*



***Contractors' License Law, independent of whether or not the consumer files a lawsuit or whether a settlement agreement in a lawsuit has been reached? What application does the Terminex case have to actions taken by the Board against a licensee?***

The Board investigates all complaints to determine if there are violations of the Business and Professions Code, regardless of whether a civil lawsuit has been filed. If a settlement agreement is reached between the parties, the Board's ability to act depends on the conditions of the settlement. For, instance, if the settlement contains a provision that any complaint pending before the CSLB will be withdrawn, and the complainant has signed the agreement, it would generally preclude the CSLB from taking further action. However, the Board clearly has authority and, in fact, responsibility to take action outside the settlement if violations of contractors license law exist. In the case of settlements, the documents are reviewed with a Deputy Attorney General on a case-by-case basis to determine if the CSLB can proceed with the matter.

The Board does not automatically allow a civil settlement or judgement to foreclose subsequent action. The laws and rules enforced by the Board have purposes. First, the law attempts to make the consumer whole. For that reason, we operate mediation and arbitration programs. Similarly, we enforce civil judgements and court-supervised settlements. Second, the law wants dishonest, unqualified or unscrupulous contractors removed from the market place. We accomplish that result through suspensions and revocations. Neither goal conflicts with civil settlements.

The Terminex case refers to a 1948 appellate ruling which held that the Board cannot take discipline against a contractor who is ready, willing and able to complete the job. This case is often cited by Administrative Law Judges as a reason to modify or dismiss actions when there is no evidence that the contractor was given an opportunity to make corrections. In well-prepared cases, dismissal and modification can be avoided by presenting appropriate evidence of the opportunities the contractor has been given to correct a problem.

A strong advantage to the new centralized intake and mediation centers is that the "Terminex" notification to the contractor can be uniformly given by the consumer service representatives in the centers. Once the statewide program is in place, CSLB will be able to eliminate some of the problems that occur when this notice is not given before the complaint is referred to investigation. To reinforce CSLB's enforcement policies, training is conducted on a regular basis. In the fall of 1999, statewide training classes were given to all field deputies which included a session devoted to the Terminex issue.

8. *Should the process by which the Board reviews, verifies and investigates applications for licensure be improved, along with the addition of a fingerprint check program similar to other boards and the Department?*

One of the more crucial objectives of the CSLB licensing system is to ensure that applicants possess the requisite experience within the trades for which licensure is granted. For those applicants who are qualified and for the sake of the construction industry licensees, it is incumbent upon the CSLB to provide the most efficient services possible so that they can operate their businesses without unnecessary delays. Accordingly, the CSLB licensing process is being re-engineered.

**Improvements to Applicant Review Process**

- The application form has been revised.
- Application investigation duties have been transferred to the Licensing Division.
- The steps for processing applications are being refined and enhanced by technology.

**Application form revision**—Most of the delays in the application process are due to errors or incorrect information provided by applicants on the application forms. By law, these applications cannot be admitted into the processing system and are, consequently, classified as “rejects.” In recent years the rejection rate for CSLB applications has averaged above 50 percent, significantly extending the application process. The most common cause for rejected applications has been inconsistencies relating to the periods of journey level work experience claimed by applicants. CSLB staff determined that the most feasible solution was to revise the application so that both the applicant and the individual(s) certifying the applicant’s experience will do so on the same form (under penalty of perjury), thereby requiring agreement between the certifying parties **prior to submission** of the application. Although other revisions have been made to simplify the application form, this revision alone should reduce the percentage of “rejections” considerably.

**Transfer of application investigation to Licensing Division**—The CSLB is under a regulatory mandate to investigate no less than three percent of all applications submitted. The purpose of such investigations is to determine the truthfulness of the application information, especially with regard to the trade experience claimed. Historically, all application investigations have been performed by enforcement staff in regional offices following a referral from the Licensing Division. However, new technology (fax, e-mail) has made office site inspections of employer books and records unnecessary. Shifting application investigation to the Licensing Division where the documents are initially received should result in greater efficiencies, enabling the completion of more application investigations. In fact, the Board adopted an objective in the CSLB Strategic Plan to increase the number of application investigations to eight percent.

**Processing refinements and technological enhancements**—Considerable effort has been made to chart the entire CSLB license application process to identify opportunities

to improve the manual processing system (flow of paper), as well as to identify functions that can be automated. The study resulted in the following recommendations:

- When processing an application in which the qualifier for the license has previously passed the exam or is subject to a waiver, allow the technician to issue the license pursuant to completion of processing, rather than shuffle the paperwork to a separate unit (Issuance). (In FY 98/99 CSLB processed 8,096 waiver applications, the majority of which were subject to transfer from the Exam Waiver Unit to the License Issuance Unit).
- Processing applications and scheduling exams simultaneously (rather than waiting to schedule an exam until processing is completed) should eliminate delays in obtaining a license for successful candidates.
- Convert the document management process to an imaging (paperless) system. This is a long-term goal that would use scanning technology to eliminate the need for paper documents. Ultimately it will include filing applications, renewals and other notices on-line. Some forms are already available on CSLB's website, such as the address change form, and on-line fee payment by credit and debit card is projected for this fall.

### **Criminal Conviction Review**

The Board has an obligation to ensure that licensed contractors meet specific qualifications. One such qualification is embodied in Business & Professions code sections 7069 and 7123. These code sections require that, in the absence of evidence of rehabilitation, the Board should deny or revoke licensure when an applicant or licensee has been convicted of a crime substantially related to the qualifications, functions and duties of a licensed contractor.

At present, the Board has no structured means of acquiring information about its licensees' criminal convictions. Moreover, even though the Board's license application requires disclosure of an applicant's criminal conviction history, the Board has no means of verifying the truth of an applicant's response. In fact, because the Board has no means of verifying an applicant's criminal conviction status, the Board sits in the untenable position of denying a license to an individual who honestly states his or her criminal history while blithely granting licenses to individuals who lie about their criminal conviction history.

The problem is even more pronounced when a licensee is convicted of a crime. Under present law, unless the criminal proceedings come directly out of the Board's involvement with a case, the Board is not privy to information about a licensee's criminal conviction. Without some means of having criminal convictions reported back to the Board, the Board cannot fulfill its obligation to revoke a license when necessary to protect the public.

### **Proposed Legislative Solution**

This legislative proposal is designed to:

- Authorize the Board to use the Department of Justice Live-Scan Fingerprinting Process to enable the Board to access criminal conviction histories as well as to be informed of future criminal convictions.
- Require all applicants for CSLB licensure to submit fingerprints to be transmitted to the Department of Justice's Live-Scan program.
- Over two renewal cycles, require all licensees applying for renewal to submit fingerprints to be transmitted to the Department of Justice's Live-Scan program.

**9. *Should the "substantial relationship" criteria on criminal convictions be expanded as it applies to home improvement contractors and salespersons?***

### **Background**

As written, Business and Professions Code section 480 allows all boards under the DCA umbrella to deny a license to an individual who has committed a crime (or a bad act) substantially related to the qualifications, functions or duties of a licensee.

The review process includes two parts. In the first, the threshold determination is made as to whether a crime is substantially related to the qualifications, duty and functions of a contractor licensee. In the second part, a determination is made as to whether the individual is sufficiently rehabilitated so that licensing is, nonetheless, appropriate.

In past years, the "substantial relationship" test was applied only to crimes that were specifically construction-related. This misinterpretation came from examples in the Board regulations which were unnecessarily restrictive and gave the wrong impression about how to apply the test. As a result of this restrictive view, an assault at a construction site was considered "substantially related" but an assault on the way home was not.

Over the past year, the Board has spent considerable time addressing the relevance of criminal convictions to the qualifications, functions and duties of a licensed contractor. The Board has directed staff to revise the regulation describing the "substantial relationship" criteria used in the present regulation. The test should be whether the crime is substantially related to the qualifications, functions and duties of a contractor, not merely to construction.

### **New Focus on Home Improvement Certification**

The Board's staff is presently examining whether a criminal conviction history should be explored not just as part of the licensing process but as part of the decision to grant a home improvement certification. Homeowners contracting for home improvement work are CSLB's most vulnerable population.

Under this proposal, there would be some crimes which might disqualify a licensee from getting a home improvement certification. For example, a registered sex offender might be licensed but never be certified. In addition, there might be violent crimes where "commercial" licensing might be appropriate long before home improvement certification is warranted. Of course, this type of proposal could not be adopted merely through Board regulation but would require a change in the laws governing Home Improvement Certification as well as assurance that the certification would not sunset as scheduled on January 1, 2004.

- 10. *Should the Board broaden or improve licensee information that it makes available to the public? Should consumers receive information on contractors who have repeated complaints, or when there is an arbitration award (whether or not the contractor has paid the award), a stipulation or settlement agreement, or a civil or criminal judgement?***

The Board has long believed that providing meaningful information to consumers to arm them in making wise contracting decisions is an essential mission of the CSLB. The Board has carried out this mission in a number of ways, including newsletters, public education forums, our toll-free information numbers and our website.

The Board's current disclosure policy is governed by Board Rule 863, entitled Public Access to Information. This rule, which has been in place since 1992, provides for public disclosure of a complaint against a licensee that has been referred to legal action. In short, this policy allows complaints against contractors to be made public if the Board, through an investigation, has demonstrated a violation of contractors license law and has referred the case either to a DA or the Attorney General's office.

Since this rule has been in place for seven years, the Board has established in its current strategic plan a goal of convening a number of public hearings early next year to revisit this disclosure policy to see if it needs to be updated. With the increase in the use of technology now available to provide consumers with instant access to information, the Board plans to ascertain whether its current disclosure policy is the one that best serves the public.

- 11. *Has the Board been able to reduce the time frame for processing complaints and completing investigations? Please explain the pilot project which the Board is implementing to re-engineer its complaint and investigation processes and how it will improve complaint processing and investigation of those complaints for***

***consumers. Does this include closing down district offices? If so, then please provide information concerning the following: (See additional questions below.)***

In order to reduce time frames for processing complaints and completing investigations, and to improve the quality and consistency of complaint resolution and investigation, the Board approved a re-engineering pilot project for the four-county region of greater Los Angeles. The goal of this project is to reduce processing time for complaints, provide greater access to consumers and homeowners, and deploy CSLB resources more efficiently. The pilot project centralizes the intake of complaints into our Buena Park office. Complaints are received by mail, phone or fax. Complaint forms can be downloaded from our website, and we hope to be able to accept complaints on-line shortly. The mediation function has also been centralized at our Buena Park operation. Our Consumer Service Representatives (CSR's) who handle complaints and mediation also work via phone, fax or the internet. The benefits of this centralized intake and mediation function include faster turnaround time for complaint handling, more consistent outcomes for consumers, and better preparation of cases that go to the field for investigation.

This re-engineering pilot also puts our deputies, who investigate complaints for probable legal action, out in the field going directly to consumers and homeowners rather than making them come to our offices. We have provided home office equipment to these deputies so they can work wherever and whenever they are needed. This provides for greater geographic coverage throughout the Los Angeles area. The pilot program has shown increased productivity for mediation and investigation staff, which will ultimately result in reduced time frames for complaint handling and investigations.

***a. What offices have been closed, which ones are still being paid for, and for how long?***

One of the major goals of our pilot project is to provide greater consumer access and protection. By providing our deputies with equipment to work wherever needed, we have created virtual offices throughout Southern California. However, for the convenience of consumers we maintain a number of offices throughout the region. We have consolidated Moreno Valley with San Bernardino, Santa Ana with Long Beach and Van Nuys with Azusa. However, since Santa Ana and Van Nuys are located in state office buildings, these facilities are available to consumers for meetings, if needed. We also maintain agreements with local building departments to utilize their offices when needed. Frequently meetings are held with homeowners in these offices if that is more convenient.

As stated previously, since the Santa Ana and Van Nuys office spaces are located in state buildings, and since it is DGS policy for a tenant to pay rent until a new tenant is located, CSLB is continuing to use this space until a new tenant is found. We are working with DGS to locate a backfill tenant. DGS has reported there is some interest in both of these locations.

**b. *What other closures are anticipated?***

If the Board approves the complaint process re-engineering pilot project for statewide implementation, CSLB will:

- Consolidate all central and northern California intake and mediation functions in Sacramento.
- Consolidate San Francisco and San Jose offices into the Oakland Investigation Center. (An investigation center houses the management and support functions of a geographic territory, is used for employee office space and for consumer/contractor meetings, and accepts drop-in visitors.)
- Convert Ventura into a “satellite office” reporting to the Azusa Investigation Center. (A satellite office is used for employee office space and as a consumer/contractor meeting site.)

Fresno and San Diego will remain investigation centers. Santa Rosa and Redding will remain satellite offices.

**c. *What impact will closures have on consumers? How will consumers file complaints and contact the Board in areas where offices have been closed?***

One of the primary goals of the complaint re-engineering project is to improve the quality of CSLB's complaint handling activities, including consumer accessibility. The re-engineering process improves accessibility in the following ways:

- Centralizes intake and tracking of complaints, thus providing “one-stop shopping” for all CSLB services and equal access to consumers no matter where they live.
- Adds toll-free telephone numbers in the intake/mediation centers. (Public lines from consolidated offices are automatically transferred to a toll free number.)
- Decentralizes deputies into the community where the actual investigations are completed.
- Increases use of automation to provide consumers and licensees access to information via the Web and ability to file complaints and license applications online.
- Increases use of automation to provide all CSRs and deputies on-line access to CSLB enforcement and licensing systems. In addition, all deputies have cellular telephones and can be contacted by consumers, coworkers, and supervisors anytime throughout the day.

CSLB has analyzed consumer access patterns and learned that while internet and automated phone response usage has tripled in the last few years, consumer traffic to field offices is declining and is almost nonexistent. This trend is largely attributed to expanding use of automation in homes and negative experiences with traffic and parking in metropolitan areas. Maintenance of large, expensive office space hinders CSLB's ability to provide efficient, cost-effective public services. It should be noted that no negative public comments were received after CSLB consolidated its San Ana, Moreno Valley and Van Nuys offices.

**d. *What impact will closures have on employees, the Board and its licensees?***

Because the closed offices were geographically close to the remaining offices, most employees have not been significantly affected. CSLB has assisted employees who did not wish to be relocated by helping to find them new jobs, reassigning them to a better location or allowing them to work from their homes whenever possible. Advance notice has always been given far and above legal requirements. Employees who were consolidated into the Buena Park Intake/Mediation Center have reported that they like the more even workload distribution, better training and supervision, and the communication made easier by combining the offices.

The re-engineering also gives the Board a more flexible infrastructure that can change as complaint demographics change. Large district office locations are usually outdated before the lease has run.

Like consumers, licensees initiate most of their business with CSLB via telephone, fax, mail or the Internet.

**e. *Are the Board and the Department fully cognizant of the scope and impact of the "pilot project" and actions taken so far by Board staff?***

The Board's Executive Committee approved the pilot project one year ago. But the ideas and concepts composing the pilot were not new. During 1998, Board management, staff, and rank and file engaged in numerous conversations as to how best to offer higher values to consumers and contractors. Those discussions colored and framed the action taken by the Board. To ensure full disclosure, the Board directed staff to brief Legislators and the Department. Staff provided such a briefing in March 1999.

To guarantee full recognition of the pilot program's direction and results, staff has updated Board members and the public at every Board meeting since January 1999. All Board meetings are publicly noticed and are available on the CSLB website in Real Audio, which allows any interested party to listen to the meetings from anywhere in the world.

We have also placed articles in our newsletter, *California Licensed Contractor*, which the Department reviews before it is published and mailed quarterly to nearly 300,000 recipients.



Because of those extensive outreach efforts, the Board believes there is little reason for interested parties not to be cognizant of the impacts and actions of its pilot project.

12. *Please indicate what portion of enforcement actions by the Board over the past four years involve unlicensed contractors versus licensed contractors, and what portion of complaints “initiated by the Board” over the past four years involve unlicensed contractors versus licensed contractors. What portion of the Board’s enforcement costs over the past four years was spent on “eradication of illegal, unlicensed contractors?” Provide the results which the Board has compiled to measure the effectiveness of its sting and sweep operations to curtail unlicensed activity.*

| Action     | FY 95-96 |            | FY 96-97 |            | FY 97-98 |            | FY 98-99 |            |
|------------|----------|------------|----------|------------|----------|------------|----------|------------|
|            | Licensed | Unlicensed | Licensed | Unlicensed | Licensed | Unlicensed | Licensed | Unlicensed |
| Accusation | 558      | --         | 378      | --         | 447      | --         | 489      | --         |
| D.A.       | 121      | 724        | 62       | 602        | 20       | 1014       | 59       | 1024       |
| Citations  | 1935     | 2175       | 2290     | 2391       | 1352     | 1642       | 990      | 1690       |

The Board has made substantial progress in the “eradication of illegal, unlicensed contractors.” In 1989, the legislature enacted Business and Professions Code section 7011.4. The statute established and funded a unit within the Board which is charged with the responsibility of rigorously enforcing statutes prohibiting all types of contracting without a license. The unit uses a variety of enforcement tactics and works closely with the member agencies of the Joint Enforcement Strike Force on the Underground Economy to combat contracting without a license and other forms of illicit contracting activity.

Enforcement tactics used by the Board include “stings,” “sweeps,” investigating jobs in progress, following leads, reviewing city and county business license applicants for compliance with licensing requirements, reviewing illegal advertising in local papers for violations and using the media to educate consumers on hiring contractors.

The Board’s concentrated enforcement activity in this area has resulted in the reduction of the number of consumers that file complaints with the Board alleging that they have fallen victim to an unlicensed contractor. In FY 1995/96, 5,100 consumers reported that they had been victimized by an unlicensed person as compared to approximately 3,500 in FY 1998/99.

The unit also combats unscrupulous *licensed* contractors that are targeting the elderly or others through fraudulent scams, and competing unfairly by not paying taxes or failing to provide workers compensation insurance for employees.

On average over the past four years, the Board has spent less than 10 percent of its budget on the Underground Economy Enforcement Unit.

**13. *Has the Board been able to improve on the reporting violations of the Contractors' State License Law from local building officials?***

In the FY 98/99 the CSLB enforcement staff contacted city and county building officials throughout the state. A letter was sent to the head of each building department giving him or her direct telephone numbers of CSLB staff in that area, offering mutual assistance in enforcing local building codes, offering to exchange visits at staff meetings of CSLB and the building department and also waiving fees for witnesses and documents. This received a positive response from the building officials and has resulted in more interaction between the agencies. In addition, CSLB enforcement staff attends local ICBO chapter meetings to exchange information on enforcement efforts and other items of mutual interest. That interaction has resulted in increased cooperation with local building departments who have had natural disasters occur in their areas or have received complaints about fraudulent work in their area.

**14. *Why should this Board be continued? Summarize what changes have been made to the current regulatory program since its last review to improve its overall effectiveness and efficiency so that it may operate more in the public interest. Why couldn't a bureau under the Director of the Department of Consumer Affairs, with an advisory committee from the profession, administer this licensing program more effectively and efficiently than the current Board?***

The Board has been effective in protecting consumers by regulating the construction industry through policies that promote the health, safety and general welfare of the public in matters relating to construction. The Board continues to work on improving processes to better serve consumers and contractors.

## **Enforcement**

With regard to enforcement, one of the biggest changes the Board has made recently is the re-engineering pilot project in Southern California. (See answer #12) The goal of this pilot project is to streamline the complaint handling process by distinguishing intake, mediation, and field investigation work and to focus resources in each of these areas to quickly and efficiently handle consumer complaints.

As the pilot project continues to run in Southern California and as the Board contemplates implementing the project statewide, staff at the Board constantly monitors its progress to see what can be improved. One of the areas identified early on is the need for ongoing training of field personnel. A core-training curriculum has been implemented for our enforcement staff to assure that all receive the training they need to do their job.

Another change recently instituted is an ongoing process of case review at all investigative centers to ensure consistent quality throughout the state. It is important that complaints and cases worked on in Northern California are being handled in the same manner as those in Southern California. This “audit” practice enables the Board to deliver high-quality, fast service to consumers.

As CSLB continues to monitor its enforcement program, staff will be constantly looking for ways to improve service. When we see such opportunities we will act on them.

In addition, the Board's Consumer Satisfaction Survey has been a critical tool in identifying areas of improvement for CSLB. For the past four years, the survey results have shown steady improvement in virtually all of the question areas. Two areas the Board is currently improving relate to question #2—checking out your contractor's qualifications, and question #6—processing cases in a timely manner. With regard to the latter, the re-engineering pilot project was designed to improve the timeliness of compliant handling. (See answer #12)

As for survey question #2, the Board has enhanced its consumer education efforts to encourage consumers to check contractors' qualifications before hiring them. Traditional news articles, advertising and increasing public awareness of the website and toll-free phone information system are all used to encourage consumers to check a contractor's qualifications and license history. If more consumers could check out their contractor prior to hiring them, fewer consumers would be harmed and more bad contractors would be driven out of business.

The Board continually monitors the results of the survey to identify ways to improve service.

## **Licensing**

Since the last Sunset Review, the Board has implemented the Home Improvement Certification Program. Starting July 1, 2000, a contractor will be prohibited from engaging in the business of home improvement or providing home improvement goods or services unless he or she is certified as a home improvement contractor.

The licensing staff has developed a consumer satisfaction survey for applicants, licensees and consumers that will be conducted on a semiannual basis.

The CSLB website has been expanded to include information on licensing, complaints, license bonds, and workers' compensation insurance. Publications and forms can now be ordered and downloaded and a question and answer guide for building officials has been added.

## **Testing**

Since the last Sunset Review, the Board has completed occupational analyses and examination revisions for 13 percent of its licensing examinations. The Board has secured funding and testing personnel to revise the remaining licensing examinations over the next five years. By providing valid, up-to-date licensing exams, consumer protection is enhanced and the quality of private and commercial construction is improved.

## **Board vs. Bureau**

The final question posed asks whether a bureau could be more efficient or effective at regulating the construction industry. The answer is no. Changing governance has little effect on operations because it does not change the environment or oversight structure. The real question is this: What governance works best to protect consumers and foster economic prosperity?

The Board thinks the current structure, which has been in place for more than a half century, has proven its value. It offers wide representation, mixing industry, public, labor, and government representatives. It protects consumers well, recovering a third or more of the face value of contested contracts. It offers unparalleled access to the public by making all its decisions at open public meetings. It has produced an industry that for the most part is clean and fair.

The issue is not whether a bureau is efficient, or even whether the Board is necessary. It is: Which governance structure is best for Californians?

### Appendix I. Schedule for Completion of Occupational Analyses

| Examination Classification                        | Need for Revision Based on Independent Audit | Completion Date of Occupational Analysis (FY) | Occupational Analysis Developer |
|---|--|---|---------------------------------|
| B (General Building)                              | Highest                                      | 2000  | DCA                             |
| C-10 (Electrical)                                 | Highest                                      | 2000  | DCA                             |
| A (General Engineering)                           | High   | 1998  | CSLB                            |
| C-5 (Carpentry, Cabinetry & Mill Work)            | High   | 1999  | CPS                             |
| C-35 (Lathing and Plastering)                     | High   | 1999  | CPS                             |
| C-39 (Roofing)                                    | High   | 2000  | CSLB                            |
| C-43 (Sheet Metal)                                | High   | 1999  | CPS                             |
| C-51 (Structural Steel)                           | High   | 1999  | CPS                             |
| C-9 (Drywall)                                     | High   | 2000  | ICBO                            |
| C-20 (Heating, Ventilating, and Air Conditioning) | High   | 2000  | SPB                             |
| C-33 (Painting and Decorating)                    | High   | 2000  | SPB                             |
| C-36 (Plumbing)                                   | High   | 2000  | SPB                             |
| Law and Business                                  | High   | 2000  | CSLB                            |
| Asbestos Certification                            | Moderately High                              | 2000  | CSLB                            |
| C-2 (Insulation and Acoustical)                   | Moderately High                              | 2000  | ICBO                            |
| C-7 (Low Voltage)                                 | Moderately High                              | 2000  | ICBO                            |
| C-12 (Earthwork and Paving)                       | Moderately High                              | 2000  | ICBO                            |
| C-21 (Building, Moving and Demolition)            | Moderately High                              | 2000  | ICBO                            |
| C-27 (Landscaping)                                | Moderately High                              | 2000  | SPB                             |
| C-45 (Electrical Signs)                           | Moderately High                              | 2001  | ICBO                            |
| C-54 (Tile)                                       | Moderately High                              | 2000  | CSLB                            |
| C-55 (Water Conditioning)                         | Moderately High                              | 2001  | ICBO                            |
| C-57 (Well Drilling)                              | Moderately High                              | 2001  | ICBO                            |
| C-61 (Limited Specialty)                          | Moderately High                              | 2001  | CSLB                            |
| Hazardous Certification                           | Moderately High                              | 2001  | CSLB                            |

**Appendix I. Schedule for Completion of Occupational Analyses, continued**

| Examination Classification             | Need for Revision Based on Independent Audit | Completion Date of Occupational Analysis (FY) | Occupational Analysis Developer |
|--|--|---|---------------------------------|
| C-11 (Elevator Installation)           | Moderate                                     | 1998  | CSLB                            |
| C-4 (Boiler, Water Heater)             | Moderate                                     | 2001  | ICBO                            |
| C-8 (Concrete)                         | Moderate                                     | 2002  | TBA                             |
| C-13 (Fencing)                         | Moderate                                     | 2002  | TBA                             |
| C-16 (Fire Protection)                 | Moderate                                     | 2001  | ICBO                            |
| C-17 (Glazing)                         | Moderate                                     | 2001  | ICBO                            |
| C-23 (Ornamental Metal)                | Moderate                                     | 2002  | TBA                             |
| C-29 (Masonry)                         | Moderate                                     | 2001  | TBA                             |
| C-32 (Parking and Highway Improvement) | Moderate                                     | 2001  | TBA                             |
| C-34 (Pipeline)                        | Moderate                                     | 2001  | TBA                             |
| C-38 (Refrigeration)                   | Moderate                                     | 2002  | TBA                             |
| C-42 (Sanitation Systems)              | Moderate                                     | 2001  | TBA                             |
| C-46 (Solar)                           | Moderate                                     | 2002  | TBA                             |
| C-47 (General Manufactured Housing)    | Moderate                                     | 2001  | TBA                             |
| C-50 (Reinforcing Steel)               | Moderate                                     | 2002  | TBA                             |
| C-53 (Swimming Pool)                   | Moderate                                     | 2001  | TBA                             |
| C-60 (Welding)                         | Moderate                                     | 2002  | TBA                             |
| C-15 (Flooring and Floor Covering)     | Low  | 2003  | TBA                             |
| C-28 (Lock and Security Equipment)     | Low  | 2003  | TBA                             |
| Home Improvement Certification         | Low  | 2003  | TBA                             |

## RESPONSE TO QUESTIONS RAISED IN NOVEMBER 1999 PUBLIC HEARING

The following are CSLB's responses to issues and questions that arose during the public hearing on November 30, 1999.

### **1. Complaint Data**

The JLSRC during the hearing requested that CSLB breakdown Table 7 – Complaint Data that was included in the Board's Sunset Review Report by source and type.

**Table 7 – Complaint Data (from page 15 of CSLB Sunset Review Report)**

|   | <b>FY 95-96</b> | <b>%</b>   | <b>FY 96-97</b> | <b>%</b>   | <b>FY 97-98</b> | <b>%</b>   | <b>FY 98-99</b> | <b>%</b>   |
|---|-----------------|------------|-----------------|------------|-----------------|------------|-----------------|------------|
| <b>Complaints Filed (by Source)*</b>                        | <b>30,806</b>   | <b>100</b> | <b>30,967</b>   | <b>100</b> | <b>31,863</b>   | <b>100</b> | <b>26,076</b>   | <b>100</b> |
| Public  | 21,960          | 71         | 20,892          | 67         | 20,691          | 65         | 17,802          | 68         |
| Trade/Professional  | 2,274           | 7          | 1,951           | 6          | 1,828           | 6          | 1,163           | 4          |
| State/Local Agencies  | 127             | <1         | 105             | <1         | 100             | <1         | 71              | <1         |
| Initiated by Board  | 6,445           | 21         | 8,019           | 26         | 9,244           | 29         | 7,040           | 27         |
| <b>Complaints Filed (by Type)**</b>                         | <b>32,856</b>   | <b>100</b> | <b>32,800</b>   | <b>100</b> | <b>32,582</b>   | <b>100</b> | <b>27,320</b>   | <b>100</b> |
| Workmanship/Abandonment                                     | 10,921          | 33         | 10,184          | 31         | 9,873           | 30         | 9,515           | 35         |
| Non-Licensee  | 8,661           | 26         | 9,481           | 29         | 10,471          | 32         | 8,108           | 30         |
| Other (contract disputes, etc.)                             | 13,274          | 40         | 13,135          | 40         | 12,238          | 38         | 9,697           | 35         |
| <b>Closures through Mediation***<br/>(No Investigation)</b> | <b>13,244</b>   | <b>43</b>  | <b>12,864</b>   | <b>42</b>  | <b>12,273</b>   | <b>39</b>  | <b>11,521</b>   | <b>44</b>  |
| <b>Referred to Investigation</b>                            | <b>17,759</b>   | <b>58</b>  | <b>17,581</b>   | <b>57</b>  | <b>18,212</b>   | <b>57</b>  | <b>14,666</b>   | <b>56</b>  |

\* Complaints by source taken from files opened

\*\* Complaints by type taken from files closed

\*\*\* Mediation and Investigation totals refer to different time periods and may total more or less than 100%.

**Closed Complaints by Source and Type**

|                         |                        | FY 96-97                |        |                       |        |
|-------------------------|------------------------|-------------------------|--------|-----------------------|--------|
| Type                    | Trade/<br>Professional | State/Local<br>Agencies | Public | Initiated by<br>Board | Total  |
| Workmanship/Abandonment | 165                    | 8                       | 9,996  | 15                    | 10,184 |
| Non-Licensee            | 438                    | 16                      | 4,896  | 4,131                 | 9,481  |
| Other *                 | 1,635                  | 105                     | 6,484  | 4,911                 | 13,135 |
| Total                   | 2,238                  | 129                     | 21,376 | 9,057                 | 32,800 |
|                         |                        | FY 97/98                |        |                       |        |
| Type                    | Trade/<br>Professional | State/Local<br>Agencies | Public | Initiated by<br>Board | Total  |
| Workmanship/Abandonment | 113                    | 9                       | 9,736  | 15                    | 9,873  |
| Non-Licensee            | 557                    | 18                      | 5,205  | 4,691                 | 10,471 |
| Other *                 | 1,422                  | 76                      | 5,074  | 5,666                 | 12,238 |
| Total                   | 2,092                  | 103                     | 20,015 | 10,372                | 32,582 |
|                         |                        | FY 98/99                |        |                       |        |
| Type                    | Trade/<br>Professional | State/Local<br>Agencies | Public | Initiated by<br>Board | Total  |
| Workmanship/Abandonment | 108                    | 10                      | 9,384  | 13                    | 9,515  |
| Non-Licensee            | 211                    | 15                      | 3,738  | 4,144                 | 8,108  |
| Other *                 | 1,048                  | 48                      | 5,091  | 3,510                 | 9,697  |
| Total                   | 1,367                  | 73                      | 18,213 | 7,667                 | 27,320 |

\* Complaint type "Other" includes many different groups, most notably: license maintenance violations, failure to make payment to subcontractors or material suppliers and home improvement contract violations.

## **2. Restitution Data**

During the hearings the JLSRC requested that the Board breakdown Table 14 – Restitution Received by Consumer, that was included in the Sunset Review Report by type of complaint.

**Table 14 – Restitution Received by Consumer (In Thousands)**  
(from page 19 of CSLB Sunset Review Report)

| Restitution to Consumer  | FY 95-96      | FY 96-97      | FY 97-98      | FY 98-99      |
|--------------------------|---------------|---------------|---------------|---------------|
| Accusations              | 165           | 117           | 388           | 364           |
| Citations                | 373           | 701           | 585           | 957           |
| Arbitration              | 1,490         | 1,656         | 1,665         | 1,844         |
| Mediation                | 11,436        | 9,776         | 13,115        | 8,554         |
| Civil Judgments          | 11,112        | 9,861         | 14,895        | 12,159        |
| Surety Bonds             | 5,335         | 5,720         | 5,123         | 4,760         |
| <b>Total Restitution</b> | <b>29,911</b> | <b>27,831</b> | <b>35,771</b> | <b>28,638</b> |

The following table breaks down restitution received by consumers by workmanship/abandonment, other and non-licensee. CSLB cannot breakdown information on civil judgments by type, because, very few civil judgments can be tied to specific complaints in our complaint files due to the fact that this information is not given to the board when a judgement is received.

**Restitution Received by Consumers (In Thousands)**



|                         |                   | FY 96/97       |                |        |
|-------------------------|-------------------|----------------|----------------|--------|
| Type                    | From Legal Action | From Citations | From Mediation | Total  |
| Workmanship/Abandonment | 116               | 568            | 5,463          | 6,147  |
| Non-Licensee            | 0                 | 0              | 48             | 48     |
| Other *                 | 1                 | 134            | 4,265          | 4,400  |
| Total                   | 117               | 701            | 9,776          | 10,594 |
|                         |                   | FY 97/98       |                |        |
| Type                    | From Legal Action | From Citations | From Mediation | Total  |
| Workmanship/Abandonment | 388               | 434            | 6,126          | 6,948  |
| Non-Licensee            | 0                 | 0              | 35             | 35     |
| Other *                 | 0                 | 151            | 6,954          | 7,105  |
| Total                   | 388               | 585            | 13,115         | 14,088 |
|                         |                   | FY 98/99       |                |        |
| Type                    | From Legal Action | From Citations | From Mediation | Total  |
| Workmanship/Abandonment | 345               | 738            | 2,769          | 3,852  |
| Non-Licensee            | 0                 | 0              | 30             | 30     |
| Other *                 | 19                | 219            | 5,755          | 5,994  |
| Total                   | 364               | 957            | 8,554          | 9,876  |

\* Complaint type "Other" includes many different groups, most notably: license maintenance violations, failure to make payment to subcontractors or material suppliers and home improvement contract violations.

### **3. Consumer Satisfaction Survey**

The JLSRC also requested that CSLB staff breakout the Consumer Satisfaction Survey results by origin of the complaint i.e. filed by a consumer, industry member, government agency, etc.

The survey samples complaints from consumers and from construction industry members only. Since the complaints from construction industry members make up a small percentage of the complaints received by the board, the survey respondents from this group number only 103 out of 2071 total respondents.

We believe data drawn from such a small sub-sample would not lead to reliable conclusions and in fact may be extremely misleading. None the less, if the Committee still wishes us to provide this information we would be happy to do so. However, we would strongly advise that the Committee draw no inferences from the data since they would be statistically unreliable.

#### **4. Mechanic Lien law in State Constitutions**

During the November 30, 1999, Sunset Review Hearings, Assemblyman Honda requested information about whether other states include mechanics' lien rights in their constitutions. Staff conducted a WESTLAW search to answer this question.<sup>1</sup> This search disclosed only one state, Texas, in which mechanics' lien law is a constitutional mandate. Two other states, Ohio and North Carolina, include some constitutional protection for mechanics' liens. These states prohibit their respective legislatures from impairing mechanics' lien rights.

A discussion of the Texas statutory scheme might be in order. The text of the Texas Constitution is remarkably similar to that of California.<sup>2</sup> The California Constitution provides: "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens." Texas interprets its constitutional provision differently than California, however. In California, subcontractors, although not specifically mentioned in the text, are included as beneficiaries of the Constitutional mandate. In Texas, subcontractors are not included. Instead, Texan subcontractors are thought to have statutory lien rights based on a derivative theory, i.e., they derive their rights from the contract between the original contractor and property owner as recognized in statute. A review of Texas case law reveals, however, that there is little difference in Texas law between constitutionally based lien rights and statutorily based lien rights. The Texas legislature requires the same kind of notice and procedural requirements for material suppliers whose rights are based in the Texas Constitution as for subcontractors whose rights are based in statute. In other words, the fact that some rights are Constitutional and others are not does not appear to restrict the Texas Legislature's authority to create strict standards.

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<sup>1</sup> Staff assumed that any state with mechanics' lien law in its Constitution would make note of that fact in its case law. Staff searched ALLSTATES on WESTLAW for "Constitution\*" in close proximity to "mechanics' lien." This search identified 113 cases. The majority concerned California and Texas law.

<sup>2</sup> The Texas Constitution provides: "Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

## **RESPONSE TO ISSUES AND RECOMMENDATIONS OF APRIL 2000 PUBLIC HEARING**

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### **INTEROFFICE MEMORANDUM**

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**TO:** JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE  
**FROM:** THE CONTRACTORS STATE LICENSE BOARD  
**SUBJECT:** RECOMMENDATIONS OF DEPARTMENT AND THE  
JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE  
**DATE:** 4/7/00  
**CC:** CSLB BOARD, EXECUTIVE STAFF, AND FILE

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### **The Overall Impression**

We are pleased to report that the Department's and committee's recommendations are consonant with directions and priorities set by the Board. Where we have differences they are either minor, have been addressed in another venue, or are easy to resolve.

The recommendations validate the power and useful life of sunset review. This is our third year and we are down to questions not of goals or mission, but of tactics and refinements. Such issues are best addressed through normal Legislative review and oversight.

It is our understanding that absent an extension of our sunset date, the Board's functions and responsibilities move to the Department of Consumer Affairs. Unless that is the Committee's desire, it must carefully guard against creating a vehicle that produces that outcome by accident. A multipurpose bill will usually draw more objections and opposition than a single purpose bill – consider the Governor's budget. An extension bill lumbered by extraneous issues could produce the results that neither the Board, the industry, its consumers nor the Legislature want.

Below we repeat the recommendations and give our position on each one.

## **The Contractors State License Board's Responses:**

### *1. Should the licensing and regulation of contracting work be continued?*

*The Department recommends that the state continue regulating contracting work in order to protect consumers.*

We agree.

### *2. Should the Board be continued, or should its role be limited to an advisory body and the remaining functions transferred to the Department?*

*There is no recommendation from the Department at this time.*

The Department's lack of a formal recommendation indicates that it has no preferences. This neutrality weighs in favor of maintaining the status quo. We can point with pride to our 70 plus years of regulating the construction industry. The Contractors State License Board has been a faithful guardian of the public interest and is partly responsible for an industry admired throughout the world.

In light of the congruence between the Department's formal recommendation and our actions, the Board should be continued.

### *3. In spite of existing laws, including Board regulation of home improvement salespersons and disclosure requirements for home improvement contractors, home equity lending scams have continued. The Department has asked the Board for an assessment of this problem, and for its proposals to remedy it, but has not yet received a report of recommendations.*

*The Department recommends the Joint Committee direct the Board to conduct a comprehensive review of the issues surrounding home improvement contracts and home equity fraud, and report its findings to the Department and legislature no later than January 1, 2001.*

The Contractors State License Board shares the frustration evidenced by the Department and the JLSRC. In 1998, we, the Board and the State and Consumer Services Agency, worked with Assemblyman Wright to pass a bill (AB 2301, Sections 7159.1 and 7159.2). That legislation further formalized and circumscribed the relationship between home improvement contractors, their agents, and taking a security position. That bill became law in January, 1999. While the bill clarifies relations between consumers and contractors, it does not address a critical nexus – what appears to be overly aggressive lending practices. Those issues are currently reserved to regulation by the Department of Financial Institutions and the Department of Real Estate.

We too are disheartened when a community activist in Riverside tells of a major lender approving loans to elderly homeowners containing repayment schedules that defy logic. When questioned on those loans, the lender offers a pale justification that laws against age discrimination forced the lender to approve them.

We fully agree that better law would help, and welcome the opportunity to present recommendations to the Department and the Legislature as to how best to proceed. Although the

Board is not aware of any request by the Department for an assessment of this problem, we stand ready to comply.

*4. The Mechanics' Lien law often places homeowners and property owners at risk of financial loss for actions of a general contractor. Clearly, the existing system, which was intended to protect interests of subcontractors, material suppliers and laborers, to assure payment for services, inappropriately transfers liability from the general contractor to a homeowner.*

*The Department recommends that a labor and consumer task force once again review the issues and consider possible resolutions.*

We agree that the current lien rights and surrounding law can jeopardize consumers. For the last year, we have been looking at how lien rights and laws play out between consumers, contractors, subcontractors, material suppliers, and labor. Our focus has been how to restructure that balance. We are therefore more than ready to pursue the Department's recommendation.

We will work with the Department to convene a task force to consider possible resolutions. We offer to report the results to the Legislature. Moreover, since we are already proposing changes to the Mechanics' Lien process as part of our Home Improvement Plan, we will use the Task Force to develop and integrate proposed improvements with the Plan. Last, we will share the results with the California Law Revision Commission.

*5. The Board operates field offices throughout the state that are open to the public and to Board Licensees. Through the Board's re-engineering plan it is proposing to close many of these offices, relocate staff, and redesign its work flow to facilitate centralization of its operations. It is unclear whether these changes will improve the quality and consistency of complaint handling and investigation cases and reduce time frames for each, and what impact this will have on consumer and industry access to Board Staff.*

*The Department recommends that the Joint Committee review the Board's plans and their impact on consumer and industry access to Board staff. The Department further recommends that this review include a study of the impact of these plans on the Board's ability to carry out its mission.*

Based on empirical evidence, we judge that the reorganization has produced as promised. It has reduced cycle times. It has increased case quality. It will reduce costs. It has positively (not adversely) affected our processes, procedures and outcomes. We are happy to keep the Legislature apprised of our progress. But more reviews, studies or analyses are superfluous.

Some background helps to explain and support our conclusions. The Board's activities divide into two main areas: Licensing and Enforcement.

Licensing is unaffected by the restructuring. Licensing has always concentrated in Sacramento. To provide industry access (in every sense of the word) we maintain testing centers in San Diego, San Bernardino, Buena Park, Long Beach, Ventura, Fresno, Oakland and Sacramento. Moreover, when we look at our current test load, we probably need to add a center in San Francisco. At these centers we currently offer a wide range of services to licensees. We have no proposals to close or consolidate any of those offices and their services.

Only Enforcement changed in the re-engineering. While the Department believes we are centralizing, we have, in fact, decentralized. We decentralized our field investigators by equipping and training them to work out of their homes and other remote locations. Consumers who are harmed or injured by contractors want CSLB staff to come to their homes and see the damage. They want face to face meetings at times and places convenient for them, which usually means the kitchen table or a friendly restaurant booth. Consumer visits to our field offices are almost nonexistent.

What we have centralized is intake and mediation. We have long required the consumer to mail a complaint form to one of the Board's offices. Consumers might experience vastly different levels of service on the luck of the draw. The office chosen by the consumer may be understaffed, less productive or over-booked because of a natural inability to predict workload by geographic location. Moreover, office by office intake and mediation can fall victim to local culture and vagaries of local supervisors, as well as time and chance. Centralization of intake ensures equal, consistent, quick and effective treatment.

Closing offices where only deputies report does not disenfranchise consumers. Complainants and contractors rarely come uninvited. Even those who might come to pick up an application now pick up what they need over the Internet. The information age has arrived. We have designed, built, maintained and expanded a point-with-pride website. (Recently, we were singled out for praise at a government innovation seminar put on by Governor Davis.) The site ([www.cslb.ca.gov](http://www.cslb.ca.gov)) is so highly valued by those fortunate enough to afford construction services that our annual visitor volume is on its way to 2,000,000. We have our complaint form on-line and 800 times each month consumers download the form. In about a month we will accept complaints on line. This success reflects the massive growth of the Internet. Between January 1999 and January 2000, more than 44,000,000 American households signed up for Internet Service. Between 1995 and 1999 Internet subscriptions tripled. Experts expect the market to double again in 4 years.

Looking downstream, the Internet provides the near perfect structure for field offices. It affords easy access, quick response and low transaction costs. With the pace of life accelerating moment by moment and congestion clogging our freeways and streets, consumers want 24/7 service in their homes. The Internet satisfies that want. Consumers do not have to come to the Contractors State License Board; we come to them, offering high quality service from the comfort of their homes. This is more than rhetoric. With increasing frequency, consumers are going to our website before filing a complaint. Consequently, their filing often identifies which sections of law they believe their contractor violated.

We do not rely exclusively on the Internet. We maintain a modern telephone center that handles 30,000 calls per month. Access to the center comes through a toll-free 800 number. Live operators are available to answer questions and provide help. The line is dedicated to the Contractors State License Board, so we, unlike the Department or the Bureau of Automotive Repair, do not carry an excessive burden of "nonjurisdictional" calls.

That is not to say that we believe every consumer can, will, or should come to us electronically. Seniors are not yet part of the Information Revolution. Therefore, we have launched an aggressive outreach campaign directed at seniors and those who serve them. In the last three

months, we have visited Senior Centers located in the heart of California's various retirement centers, such as Monterey County, Fresno County, Riverside County, and Butte County. We regularly mail consumer education packages to such centers. We continue to work with community organizations such as the Mexican American Opportunity Foundation and Bet Tzedek.

We have formed strategic alliances with several major retailers, including Home Depot, to distribute our literature at their checkout counters. This will put information in the hands of any consumer serious enough about construction to go to a hardware store.

Last, we work hard to provide just in time information to consumers by attending nearly all the major home shows held through out the year at various locations. At those shows, we personally help consumers by giving them the information to build on. In addition, if needed, we provide complaint forms and help fill them out.

The Department also expresses concern for relocated employees. With few exceptions, we have centralized intake and mediation functions by "moving" vacancies, not people. When an employee has not wanted to move, senior staff has called prospective employers (other state agencies) with great success to help with placement. Despite having closed offices in Van Nuys, Moreno Valley, Santa Ana and Inglewood, only a few employees have been involuntarily moved.

*6. The Board should pursue legislation to require a bond for registered salespersons. The Board should provide similar information on its website for registered salespersons, as is provided to the consumer for licensed contractors. The Board should also improve its tracking of sales persons who are involved with contractors that may be under investigation, to assure the registered salespersons cannot continue their fraudulent activity or be inadvertently licensed as contractors. Investigators for the Board should receive training on the type of scams and fraud associated with home improvement contracting, and work more closely with local aid and district attorney offices involved in this issue.*

Like many recommendations made by JLSRC staff this recommendation nicely dovetails with our current priorities, projects and directions. We will make it a priority to work with the Legislature to produce, process and pass legislation requiring bonding. We are also pleased to inform the Committee that we are in the process of adding salespersons to our website. Our current practice is to investigate any application by a salesperson with a past, present or pending legal action. That practice effectively prevents inappropriate licensing. Last year, we trained all Consumer Service Representatives and Deputy Registrars on the various scams inflicted by salespersons on unwary consumers. Moreover, the reorganization freed up resources to create, staff and operate a training unit. It has already revised and published our consumer service representative procedure manual, is in the process of revising the field manual, and has held several system-wide training classes.

The reorganization added an early warning system to our arsenal. Centralized intake brings patterns of behavior to our attention much sooner. Two years ago, we were slow to recognize a particular company's pattern of exploitation in Southern California. (In this case, we recently obtained a criminal conviction against the principal owner, who now faces a four-year sentence.)

Now, we catch the criminal behavior much sooner. An example is the case against EverClear, a company which preyed on Spanish-speaking households, using high-pressure sales tactics. Upon sale, they installed products incorrectly and did not fulfill their contracts. EverClear worked Ventura and San Bernardino counties. We worked closely with the District Attorney in both counties and obtained swift justice.

*7. The Board should transfer responsibility for regulating contractors involved in asbestos abatement to the Department of Occupational Safety and Health by July 1, 2001*

The Board agrees with the JLSRC recommendation and in April of 1997, the Board approved a resolution to develop a legislative proposal aimed at transferring the program to the Department of Occupational and Health and Safety. This action would eliminate the need for applicants to apply to both agencies and, more importantly, place program responsibility under the agency with the appropriate expertise.

The Department is not ready to take on this program, however. Transferring the regulatory program to the Department requires legislation this year to be effective next summer. It also requires Budget Change Proposals, which the Board and the Department must submit separately. We will again approach the Department about this proposal.

*8. The Board should complete an occupational analysis for all of its contractor examinations as per "Schedule for Completion of Occupational Analyses" provided to the Joint Committee. Examinations with highest, high and moderately high need for revision should be completed by June 2001 and those with moderate or low need for revision completed by June 2002. The authority of the Board to waive examinations should sunset by January 1, 2001, unless the Board can provide justification for continuing the waiver process.*

This recommendation has two parts. The first calls for us to adhere to our published schedule for revising and updating examinations. Although this recommendation focuses on occupational analyses, the Board plans to also rewrite its examinations subject to funding continuation.

The second part has to do with examination waivers. Most waivers allow contractors who have passed the business and law examination and a trade examination to modify their licenses. Waivers are not designed to let unqualified individuals use a back door to licensure. According to a study by an independent consultant, the complaint histories of those receiving a waiver closely resemble the histories of those passing an examination. In both populations, seven of eight contractors never draw a complaint. Thus, data does not indicate a problem with waivers. In any event, waiver provisions are in law—only legislation can remove them. If this recommendation is to be implemented, the Legislature must act this year.

Below we give an overview of the law to further clarify the points made above.

## **Overview**

B&P Section 7065 - Requires waiver of the license exam (both parts; trade and law) whenever an individual:

- is currently listed as the qualifier on a license, or
- was listed as the qualifier on a license some time during the past five years, or,



- has passed the license exam within the past five years.

Note: Approximately 85 percent of all waivers granted are for applicants who previously qualified for a license as outlined above—for example, a sole owner applying for a corporate license. The waiver can only be granted if the individual previously qualified for that classification.

B&P Section 7065.1 - Provides for a waiver of the license exam (both parts) for an individual who has been associated with a licensed entity. To be applicable, one of the following must exist:

For five out of the past seven years, the individual must have been listed on the Board's official records as a member of the personnel of any license that has been active and in good standing.

The individual is an immediate member of the family of a licensee who is deceased or unable to continue the business, and is able to show that he/she was actively engaged in the licensee's business for five out of the past seven years.

The individual is an employee of a corporation seeking to replace its former qualifying individual and the new qualifying individual has been continually employed by the corporation in a supervisory capacity in the same classification for five out of the past seven years. The corporation must not have requested a waiver under this subsection within the past five years.

In all situations, the license must have been active and clear during the time on which the qualifying person bases his/her five years experience. Additionally, the individual applying for the waiver must have been actively and continuously engaged in the licensee's construction business during that five-year period.

B&P Section 7065.2 - Provides for waiver of the license examination if the applicant has previously held a valid contractor's license in this state and has been acting in the capacity of a contractor for the United States government in a position exempt from licensure under the California Contractors License Law. Request for waiver under this section is very rare.

B&P Section 7065.3 - Provides for waiver of the trade portion only of the exam for a licensee applying for an additional classification closely related to a license classification currently held. All the following conditions must be met:

- The qualifying individual has been listed on a license for five out of the past seven years and the license was active and clear during that five year period; and,
- The qualifying individual has had not less than four years experience out of the past ten in the classification requested; and,
- The classification requested is closely related to the license classification or classifications currently held, or are a significant component of a General Building or General Engineering contractor's business.

For example, a General Building "B" contractor who has been performing plastering (C-35) work under his/her "B" license would be eligible for waiver of the C-35 trade exam if all waiver requirements were met.

To reiterate, the vast majority of licenses issued through the waiver process are for applicants who have previously taken and passed the exam. In most of those instances, it is for the benefit of licensees that have incorporated.

*9.(1) The legal standard of requiring homeowners to prove that the contractor “willfully and deliberately” violated the law should be changed, as well as any other “pay-out” criteria that places [SIC] an undue burden on the homeowner to collect on the contractor’s surety bond. The homeowner should be able to collect up to the full amount awarded in small claims court. Consideration should be given to raising the bond amount, a “step-bonding” approach based on the amount of the prime contractor, and a mandatory performance bond for higher end contracts.*

Committee staff asserts that the Contractors State License Board has rejected changes to the contractor’s license bond. That is not true. The Board has supported changes to Contractors License Law that increase the likelihood of Surety pay out’s. These proposals have, thus far, failed to gain legislative approval.

The Board has traditionally supported removing “willful and deliberate” from the statutes. In addition, the Board has also traditionally supported proposals to change the jurisdiction of small claims courts to allow the entire \$7,500 contractor’s license bond amount to be awarded.

The staff to the JLSRC also recommends that CSLB continue to consider such ideas as increasing the contractor’s license amount, step bonding and mandatory performance bonds for higher end contracts. The CSLB will continue to explore all these approaches. By way of example, CSLB recently held a meeting with the Nevada State Licensing Board to examine, among other things, Nevada’s step bonding approach. While applying Nevada’s approach to California would create an enormous bureaucracy in California, we continue to seek a step bonding approach that would work in California. We also continue to explore such options as mandatory performance bonds. Nevertheless, we worry about the universal necessity of performance bonds and their effects on construction costs and hence housing affordability, and whether bonds present barriers to entry for small businesses.

*9.(2) The Board should immediately provide to the Joint Committee its [SIC] analysis and review of recovery funds from other states and the reason for its rejection of this approach. More serious consideration and study should be given to the use of a recovery fund if an appropriate funding mechanism can be found*

Last year, to find ways to address financial injury to consumers, the Board reviewed recovery funds used in 14 different states. The Board provided a short summary of the review in the Sunset Review Report dated October 1, 1999. We have attached a copy of the entire report.

The state recovery funds vary in size and scope. Some funds target new construction only. Some address only home improvement. Some provide ways for contractors to opt in and out. Others are mandatory. Our inquiry did not find a recovery fund that addresses the range and variety of California consumer needs – financial injury caused by mechanics’ liens, contractor bankruptcy, abandonment, incompetence, and so forth. The Board continues to evaluate ways that a recovery fund could benefit consumers. The Board has identified ways to help prevent financial harm to California consumers, however. The Home Improvement Protection Plan (HIPP) aims to reduce

financial harm by mandating that licensed contractors provide better information to residential customers.

*9.(3) Any improved information for consumers on mechanic's lien law should await review and study by the California Law Revision Commission. The Board should require that other information (and notice) be provided to homeowners, such as insurance coverage, down-payment limitations, the process of payment, the use of conditional and unconditional releases, and other ways in which the consumer can avoid financial injury. The Board should provide for more stringent enforcement of these notice requirements.*

The Board is grateful for the JLSRC's endorsement of the bulk of its Home Improvement Protection Plan (HIPP) and recommendation to expand protections.

The Board agrees to await the report of the California Law Revision Commission on mechanics' liens before pursuing the "improved information for consumers on mechanics' lien law" which we take to mean the "Mechanics' Lien Warning." The Board will also review its literature and other public information to provide better information to enable consumers to protect themselves from financial injury.

The Board will continue to work with Assemblyman Honda on lien alternatives and with other Legislators seeking better consumer protection.

The Board will continue to work on its HIPP proposals in an attempt to create a comprehensive solution to financial injury caused by incompetent and/or unscrupulous licensees.

*10. The Board should assure that there is a consistent policy and procedures for investigating complaints and take disciplinary action even though a civil lawsuit has been filed by the complainant, or a settlement agreement has been reached between the parties. The Board should also assure that there is consistent application and notification of the Terminix case ruling, which allows a contractor the opportunity to correct defective work or complete the job before disciplinary action will be pursued.*

The Board's re-engineering shifted from regional to statewide functional management, which eliminated inconsistencies in investigative practices. One policy change brought about by this management change is to perform a thorough investigation of complaints regardless of a civil court filing or settlement. We continue to work with the Attorney General if clarification is needed about case law or to support a violation. In addition, the Board has recently completed a series of training sessions that included Terminex case law as it relates to workmanship issues.

*11. The Board should improve the applicant review process. This includes increasing the number of application investigations and providing more accurate licensing information to consumers. The Board should also pursue legislation to authorize fingerprinting in the application and renewal processes to check on any possible criminal convictions of the applicant or current licensee.*

All license applications are reviewed for completeness, accuracy and to verify that the applicant meets the experience requirements. Our regulations set the minimum rate for application investigations at 3 percent (CCR 824). A few years ago we set a goal of 8 percent through redirection of resources as part of our annual strategic planning. We are moving in that direction, and are currently investigating over 4 percent.

CSLB is in the process of expanding the licensee information available to consumers, both on the website and on the automated phone response system. Especially noteworthy is the website technology which allows consumers to access all of the licenses on which a person appears. CSLB staff are currently working to make this link available at the push of a button.

As to fingerprinting, the Board is sponsoring legislation carried by Assembly Member Honda's office (AB 2370) that will require fingerprinting of all contract license applicants, home improvement salespersons and existing licensees. The legislation will, if passed, help the CSLB determine which applicants and licensees have a criminal history, possibly warranting denial or revocation of the license.

*12. The Board should revise its regulation describing the “substantial relationship” criteria so that the test is more than just whether a crime is specifically constructions related or not. The test should be whether the crime is substantially related to the qualifications, functions, and duties of a contractor to be licensed by the State, not merely construction. The Board should also seek regulatory authority to define the “substantial relationship” criteria of those seek a home improvement certification.*

The Board is in complete agreement with the Joint Legislative Sunset Review Committee's recommendation that the Board redefine the “substantial relationship” criteria found in Rule 868. Last year, the Board reviewed staff proposals for redefining CSLB's Rule 868 “substantial relationship” test and approved the approach staff had taken. The proposal makes clear that crimes or bad acts relevant to licensing need not be limited to crimes directly related to construction but rather crimes that are related to the duties, qualifications, and functions of a licensee. For example, real estate fraud is not related to construction *per se* but is certainly related to the duties, qualifications and functions of a licensee. The Board delayed initiating the regulatory process, however, pending the passage of the Board-sponsored fingerprinting proposal. Assemblyman Honda has graciously agreed to carry legislation for us in this area. With his permission, we would appreciate the Committee recording their support for this bill.

The Board also agrees with the Committee's recommendation that a substantial relationship test should be developed for Home Improvement Certification (HIC). The Board is presently developing a plan to identify criminal convictions that would bar an individual from getting an HIC but would not bar the individual from licensing.

*13. The Board should convene public hearings to revisit its disclosure policy and report to the Joint Committee by September 1, 2001. In the meantime, the Board should clearly advise consumers that they [SIC] are only providing limited information concerning the status and background of the contractor.*

The Board recognized last year that we should revisit disclosure. We incorporated that recognition into our Strategic Plan in November 1999. Following that plan, we will convene public hearings this summer. Of particular interest are these areas:

- Negative information, such as complaints, legal action, civil settlements, and judgments;
- Positive information, such as general liability coverage, nature a type of training, and extra qualifications; and
- Required information, such as name, address, bond provider, electronic access (e-mail, website) and so forth.

A departmental revision to the uniform complaint disclosure policy would greatly aid the Board in its disclosure initiative.

*14. The Board needs to provide more detailed information on what actions it has taken against unlicensed contractors versus unlicensed contractors over the past four years. This should include budgetary information, as well as enforcement activity involving each and restitution provided to the consumer involving unlicensed versus licensed contractors.*

We believe that this question comes from a table that incorrectly identified unlicensed contractors as a substantial source of consumer restitution. We have corrected the table and provided it to Committee staff.

To answer the question, proactive unlicensed activity comprises about 15 percent of our Enforcement cases, but consumes less than 15 percent of the Board's Enforcement budget. The higher productivity comes from unlicensed cases being easier to investigate and substantially easier to prosecute.

*15. The Board should continue its efforts to cooperate with local building departments and the California Building Official leadership to provide better enforcement of building codes, and increase reporting violations of Contractors State License Board's laws.*

We have established a strong working relationship with local building officials. As a courtesy to those officials, we often open cases of our own volition. We also worked with them to pass legislation (AB 1678, Committee on Consumer Protection, Chapter 982) allowing electronic checking of license status when pulling a building permit. That greatly increases the effectiveness of our law, since it is now virtually impossible to fraudulently offer oneself as licensed. We will continue to perform timely and effective investigations of complaints originating from the building departments.

*16. It should be required that all public members appointed to the Board should not be connected with the construction industry, and that they are true members of the public and are there to represent consumer interest.*

The Governor, President Pro Tem or the Speaker appoint all public members.

## **PART 5.**

### **Contractors State License Board**

#### **FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS**

**The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on April 11, 2000 by a Vote of 5 to 0:**

**ISSUE #1.** (CONTINUE REGULATION OF THE INDUSTRY?) Should the licensing and regulation of contracting work be continued?

**Recommendation #1:** *The Joint Committee and the Department recommends that the state continue regulating contracting work in order to protect consumers.*

**Comments:** Contracting work involves substantial consumer health and safety risk in terms of both financial harm and physical injury.

**ISSUE #2.** (CONTINUE WITH THE BOARD?) Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

**Recommendation #2:** *There was no recommendation from the Department on whether this Board should be continued. (See Issue #16 for Joint Committee's recommendation.)*

**ISSUE #3.** (REVIEW OPTIONS TO REGULATE THE RELATIONSHIP BETWEEN HOME IMPROVEMENT CONTRACTORS AND FINANCIAL LENDING INSTITUTIONS?) In spite of existing laws, including Board regulation of home improvement salespersons and disclosure requirements for home improvement contracts, home equity lending scams have continued. The Department has asked the Board for an assessment of this problem, and for its proposals to remedy it, but has not yet received a report of recommendations.

**Recommendation #3:** *The Joint Committee and the Department recommend that the Board conduct a comprehensive review of the issues surrounding home improvement contracts and home equity fraud, and report its findings to the Department and Legislature no later than January 1, 2001. The review should identify inadequacies in existing law and offer recommendations for effectively regulating the home improvement industry, particularly the relationship between home improvement contractors and financial lending institutions.*

**Comments:** Home equity lending fraud presents a serious consumer protection challenge in the home improvement industry. It is a growing problem for consumers who are among the most vulnerable. Fraudulent practices by lenders and home improvement contractors that result in lien-contracts secured by homes are particularly harmful to the elderly and the poor. Often, these contracts, which allow contractors to take a security interest in a home, are jointly executed by financial institutions that use non-judicial foreclosure methods to take possession of a home or to leverage consumers into loans with high interest rates, fees, and unmanageable payments.

**ISSUE #4. (ESTABLISH A TASK FORCE TO REVIEW MECHANIC’S LIEN LAW?)** The Mechanic’s Lien law often places homeowners and property owners at risk of financial loss for the actions of a general contractor. Clearly, the existing system, which was intended to protect interests of subcontractors, material suppliers and laborers, to assure payment for services, inappropriately transfers liability from a general contractor to a homeowner.

**Recommendation #4:** *The Joint Committee and the Department recommends that a labor and consumer task force once again review the issue and consider possible resolutions.*

**Comments:** Because the existing mechanic’s lien law system allows subcontractors, materials suppliers, and laborers who have not been paid by a general contractor to file a claim against the property upon which they have worked, an individual property owner may end up paying for the illegal actions of a general contractor. Consequently, a homeowner who may have fulfilled his/her obligation by paying a general contractor for work done, still may be liable for claims by subcontractors, suppliers, and laborers if the general contractor fails to pay them. Thus, existing law essentially makes the homeowner the guarantor for the general contractor. Clearly, the existing system, which was intended to protect the interests of subcontractors, inappropriately transfers liability from a general contractor to a homeowner.

Long-standing legislative concern over this issue resulted in the introduction of several bills in the 1999 legislative session to protect residential consumers against inappropriately applied mechanic’s liens. However, none of the proposed changes (including shifting liability to the subcontractor, placing additional responsibilities on the homeowner, or penalizing the general contractor) have been successful because they did not offer a viable alternative to existing law. Recognizing the tensions inherent in this issue, the Department nonetheless recommends that a labor and consumer task force once again review the issue and consider possible resolutions.

**ISSUE #5. (REVIEW BOARD CLOSURE OF FIELD OFFICES?)** The Board currently operates field offices throughout the state, which are open to the public and to Board licensees. Through its “re-engineering” plan the Board is proposing to close many of these offices, relocate staff, and redesign its workflow to facilitate centralization of its operations. It is unclear whether these changes will improve the quality and consistency of complaint handling and investigation of cases, reduce time frames for each, and what impact this will have on consumer and industry access to Board staff.



**Recommendation #5:** *The Joint Committee and the Department recommends a review by the Joint Committee of the Board’s “re-engineering” plan and the impact on consumer and industry access to Board staff. The Joint Committee and the Department further recommends that this review include a study of the impact of these plans on the Board’s ability to carry out its mission.*

**ISSUE #6. (OTHER CHANGES NEEDED TO DEAL WITH HOME IMPROVEMENT EQUITY FRAUD AND SCAMS?)** Are there additional actions or measures the Board should take to protect consumers who are harmed by registered salespersons and contractors who use retail installment contracts to create a security interest on a homeowner’s property?

**Recommendation #6:** *The Joint Committee recommends that the Board should pursue legislation to require a bond for registered salespersons. The Board should provide similar information on its website for registered salespersons, as is provided to the consumer for licensed contractors. The Board should also improve its tracking of salespersons who are involved with contractors that may be under investigation, to assure that registered salespersons cannot continue their fraudulent activity or be inadvertently licensed as contractors. Investigators for the Board should receive training on the type of scams and fraud associated with home improvement contracting, and work more closely with local legal aid and district attorney offices involved in this issue.*

**Comments:** The Board indicated that it does not know the extent to which consumers are harmed by contractors or salespersons who use retail installment home improvement contracts that create a security interest on property. That it is difficult to track because of the number of agencies that have jurisdiction in this area. (The Department believes, however, that the Board should be able to better assess this problem and take appropriate action. See Issue # 3.)

The Board believes that recent legislative changes will better protect consumers and that it will continue to aggressively pursue individuals who fraudulently use retail installment contracts. However, as stated by the Department, home equity lending fraud involving both home improvement salespersons and contractors is still a serious consumer protection issue. It was indicated by those who have been involved in this problem, and who pursue civil litigation for homeowners, that registered salespersons need to be regulated by the Board more aggressively, since they are so closely connected to the contractor who is involved in the home improvement business. That the Board needs to be able to better track salespersons who may scam homeowners, to require a bond to provide some form of restitution, and provide better training to its investigators in dealing with fraudulent practices by contractors and their salespersons.

**ISSUE #7. (BOARD CONTINUE TO REGULATE ASBESTOS CONTRACTORS?)**

**Should the Board continue to certify and regulate asbestos contractors even though it does not have the appropriate expertise in this area?**

**Recommendation #7:** *The Joint Committee recommends that the Board should transfer responsibility for regulating contractors involved in asbestos abatement to the Department of Occupational Safety and Health by July 1, 2001.*

**Comments:** While the Board has the authority to discipline contractors who violate the laws pertaining to asbestos abatement, the Board staff does not have the expertise to determine whether the actions of a contractor have resulted in a relevant violation. For such cases, the Board must rely on the investigations and testimonies of experts from the Department of Occupational Safety and Health (DOSH) or similarly qualified local officials. Consequently, the Board has agreed that its asbestos certification program should be administered by DOSH.

**ISSUE #8. (WHEN WILL OCCUPATIONAL ANALYSES OF CONTRACTOR EXAMS BE COMPLETED AND ARE ALL WAIVERS FOR EXAMINATIONS NECESSARY?)** The Board finally evaluated its contractors examinations in April 1999, as requested by the Joint Committee during its review in 1996, but it still has been unable to update the occupational analyses for many of its licensing examinations and replace “overexposed” test questions. It is also still unclear whether all of the different type of waivers for the licensing examination should be continued.

**Recommendation #8:** *The Joint Committee recommends that the Board complete an occupational analysis for all of its contractor examinations as per “Schedule for Completion of Occupational Analyses” provided to the Joint Committee, and sooner if possible. The authority of the Board to waive examinations under a number of different circumstances should be independently evaluated by the Board. It should be determined whether each and every waiver permitted assures that applicant has the appropriate experience, knowledge and skills so that an examination within a particular licensing classification is not necessary.*

**Comments:** The Board has been aware of the problems associated with its examinations since 1993, and again in 1996. The Joint Committee was very clear about moving ahead with validation (occupational analyses) of its examinations right away when recommendations were made by the Joint Committee in April 1997. (Many of its licensing examinations have not been validated for at least 14 years.) Three years have now elapsed (and six years since the issue was first raised) and the Board finally has a schedule to update these examinations. However, all examinations will not be validated until June 2002. The Board indicates that neither the Board, nor any other state or private agency has the resources to perform occupational analyses for all of the Board’s examinations simultaneously. The Board indicated that it is taking on the maximum number of projects in could accommodate for fiscal year 1999/2000. That is has set a priority list for performing an occupational analysis on other examinations and expects to have all completed by June 2002.

The need for the Board to move ahead immediately with occupational analysis of its examinations is even more critical now because of a recent court decision. A California federal court has indicated that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of “job- relatedness.” (See, *AMAE, et.al. vs. California Commission on Teacher Credentials*) According to the U.S. District Court, this standard requires periodic validation of each examination a candidate is required to take. While the court did not specify a standard for periodic review, it did indicate that an analysis performed five or more years prior does not provide a sufficient defense to its validity. Certainly, the licensing of examinations of the Board, which have not been validated in 13 years, will not be legally defensible if contested. (It should be noted that it cost the California Commission on Teacher Credentialing over \$3 million to defend its licensing examinations, some of which the court invalidated.)

The issue involving waiver of examinations was also brought to the attention of the Board in 1993, and again by the Joint Committee in 1996. The Board currently waives the examination for about one-third of all potential contractor licensees. (In FY 1998/99, this was about 7,800 applicants for licensure out of 25,400 total applicants.) Since this is such a large number of applicants not subject to an examination, there was some question whether all of the different types of waivers permitted assured that applicant has the appropriate experience, knowledge and skills necessary for licensing classification. The Board was directed by the Joint Committee in 1997, to use an independent exam expert to determine if the different categories of exam waiver assure that the applicant has the requisite skills for licensure. The Board has analyzed data to determine whether those receiving a waiver pose a greater public threat than those who take the examination. They reviewed the complaint history for those who took the examination and for those who had the examination waived over the past 5 years (about 128,000 licensees). They found that the complaint experience for these two groups was identical – 88 percent of those who took an exam and 88 percent of those whose examinations were waived had no complaints. Of the remaining 12 percent who had complaints, most (more than 60 percent) had only one complaint, regardless of their path to licensure. As the Board stated, “The clear conclusion is what commons sense tells us – a few bad apples account for nearly all consumer harms. We take comfort in finding that 19 out of 20 contractors have the contracting and business skills to succeed without harming consumers. Still more comforting is the finding that the examination and waiver processes maintain the same quality.”

This analysis by the Board still does not address whether each and every type of waiver assures that the applicant has the requisite skills. Some contractors who had the examination waived for a particular purpose, such as being a family member in a contracting business, may have more or less complaints than one who comes in from out-of-state and is granted a waiver because of prior experience. Also, the fact that complaint experience is equal may indicate that it could be lower for those applicants who do not have to take the examination, if they were required to take the examination in the first place.

Finally, this Committee heard both in testimony and in the Board’s response to this issue that “a few bad apples account for nearly all consumer harms.” This Board receives approximately 32,000 complaints per year, and over a four-year period this Committee evaluates, that amounts to over 128,000 complaints. And even though there are currently 215,500 active licensees, the extent of consumer harm that is occurring should not be underrated by the Board.

**ISSUE #9. (PROVIDE FOR MORE ADEQUATE RESTITUTION OF HOMEOWNERS?)** Current forms of restitution provided to consumers for financial injury, suffered as a result of a contractor's fraud, poor workmanship, malfeasance, abandonment, failure to perform, or other illegal acts, are inadequate. Although the Board reviewed changes to the surety bond process and possible use of a recovery fund, it rejected any changes. It instead presented some preventative measures for dealing with this problem which it calls the "Home Improvement Protection Plan 2000." Should the Legislature consider making any changes to the surety bond requirements, establishing a recovery fund for injured consumers, and implementing the preventative measures recommended by the Board?

**Recommendations #9:** *The Joint Committee recommends that the Legislature review and consider the following:*

- (1) Use of Surety Bonds to Compensate Homeowners.** *Changes to the "pay-out" criteria that places an undue burden on the homeowner to collect on the contractor's surety bond should be considered. Consideration should also be given to raising the bond amount, a "step-bonding" approach based on the amount of the prime contract, requiring performance bond for higher end contracts, or providing for some form of insurance to the homeowner and requiring mandatory general liability insurance for contractors..*
- (2) Use of a Recovery Fund to Compensate Homeowners.** *More serious consideration and study should be given to the use of a recovery fund similar to other states if an appropriate funding mechanism can be found.*
- (3) Implement Some of the Boards Recommended Preventative Measures.** *Any improved information for consumers on mechanic's lien law should await review and study by the California Law Revision Commission and the proposed task force of the Department. The Board should require that other information (and notice) be provided to homeowners, such as insurance coverage, down-payment limitations, the process of payment, the use of conditional and unconditional releases, and other ways in which consumers can avoid financial injury. The Board should provide for more stringent enforcement of these notice requirements.*

**Comments:** The Board has agreed that the current forms of restitution are insufficient to compensate consumers when they are financially injured by licensed contractors. The Joint Committee directed the Board to examine this issue and report back to the Committee before its next review. During this time the Board has considered several proposals and alternatives. In September 1998, the Registrar for the Board investigated the possible methods for providing consumers with a "safety net" and presented to the Board several proposals for them to consider. They included: (1) a "step-bonding" program based on the amount of the prime contract—the higher the amount of the contract, the higher the required bond; this would bring the existing bonding requirement in closer alignment with the potential loss; (2) a mandatory payment or performance bond—again tied to the value of the contract; and (3) the establishment of a recovery or restitution fund, funded by contractors as a requirement of licensure and maintained by the Board.

As indicated by the Center for Public Interest Law (CPIL), most Board members opposed all of the Registrar's proposals. Members opposed the bond recommendations, stating that they would

act as a "barrier to entry" for new applicants and may not be acceptable to the legislature. The idea of a restitution fund financed by contractors' licensing fees and administered by Board was also not well received by the Board. Members noted that any increased costs imposed on contractors would be passed on to consumers. One Board member vehemently opposed the restitution fund idea, arguing that these types of funds reward consumers who do not act wisely during contract negotiations at the expense of consumers and contractors who do. He argued that **consumers should be responsible for protecting themselves**. (This member is no longer with the Board.)

After the Board rejected proposals presented by its Registrar, its staff commenced work on a variety of proposals to protect consumers and enable them to better protect themselves. It is now proposing what it titles as the "Home Improvement Protection Plan (HIPP) for the year 2000. These are primarily preventative measures to assure the homeowner receives appropriate notice of the mechanics lien law, contractor's insurance coverage, and appropriate billing and payment practices.

**ISSUE #10. (CONSISTENT POLICY AND PROCEDURES FOR INVESTIGATING COMPLAINTS AND TAKING DISCIPLINARY ACTION?)** There has been some concern about how the Board deals with complaints once a civil lawsuit has been filed or a settlement agreement is reached. Also, that there has been inconsistent application and notification by the Board of the ruling in the *Terminex* case. (In this 1948 case, the court held that a contractor should be provided an opportunity to make corrections or complete the work before disciplinary action is pursued.)

***Recommendation #10:*** *The Joint Committee recommends that the Board assure that there are consistent policies and procedures for investigating complaints and taking disciplinary action, even though a civil lawsuit has been filed by the complainant, or a settlement agreement has been reached between the parties. The Board should also assure that there is consistent application and notification of the *Terminex* case ruling, which allows a contractor the opportunity to correct defective work or complete the job before disciplinary action will be pursued.*

**Comments:** The Board indicates that it investigates all violations of the Business and Professions Code, regardless of whether a civil lawsuit has been filed. However, if a settlement agreement is reached between the parties, the Board's ability to act depends on the conditions of the settlement. For instance, if the settlement states that any complaint pending before the Board will be withdrawn, it will generally preclude the Board from taking action. However, the Board clearly has authority and, in fact, responsibility to take action outside the settlement if violations of contractors license law exist.

Some consumers have complained that the Board declines to take independent or additional action when a consumer files civil suit against a licensee, and will actually close complaints pending the outcome of court action. They have also indicated that the Board will not pursue any action against a contractor upon the settlement of a civil case, and have cited a 1948 court case, *Terminix Co. v. Contractors State License Board*, for taking that position. It appears as if the Board needs to assure that its investigative personnel are clear about pursuing complaints even though a civil law suit has been filed, and what appropriate procedures should be followed

subsequent to a settlement agreement, especially if it does not prevent the Board from pursuing the complaint. Also, it should clear what the *Terminix* case requires, and as indicated by the Board, that the notification to the contractor is uniformly given by consumer representative in its local offices and by its field deputies.

**ISSUE #11. (CHANGES TO APPLICATION REVIEW AND VERIFICATION PROCESS NEEDED?)** The Board only verifies and investigates a small percentage of applications and has no fingerprint program to check prior criminal history of applicants?

**Recommendation #11:** *The Joint Committee recommends that the Board improve the applicant review process. This includes increasing the number of application investigations and providing more accurate licensing information to consumers. The Joint Committee also recommends that the Board pursue legislation to authorize fingerprinting in the application and renewal processes to check on any possible criminal convictions of the applicant or current licensee.*

**Comments:** During hearings in 1993 by the Assembly Consumer Protection Committee, the Board was criticized for only investigating about 3% of all applications as required by law. In response to this, the Board initiated a program whereby 50% of applications were verified for work experience, or other related information, to determine if there was a greater number of falsifications and ascertain whether there was a need to increase the number of investigations. (The eventual goal of this program was to verify 100% of the applications.) The Board discontinued this program due to lack of funding. (A BCP to continue this program was denied by the Department of Finance. They argued that there was only an 8% problem and the cost did not justify continuing with this program.) The Board recommended at that time continuing with this program and to do 100% verification rather than just 50%. The Board has now adopted an objective in its Strategic Plan to increase the number of application investigations to 8%.

Other boards and the Department have initiated a fingerprint check program to check on potential for a prior criminal record concerning licensees. At present, the Board has no structured means of acquiring information about its licensees' criminal convictions. The Board is currently seeking legislative authority to require applicants to submit fingerprints and to have them verified by DOJ.

**ISSUE #12. (CHANGE SUBSTANTIAL RELATIONSHIP CRITERIA FOR CRIMINAL CONVICTIONS OF CONTRACTORS?)** Should the "substantial relationship" criteria on criminal convictions be expanded as it applies to applicants for licensure, current licensed contractors, certified home improvement contractors and registered salespersons?

**Recommendation #12:** *The Joint Committee recommends that the Board revise its regulation describing the "substantial relationship" criteria so that the test is more that just whether a crime is specifically construction related or not. The test should be whether the crime is substantially related to the qualifications, functions and duties of a contractor to be licensed by the State, not merely construction. The Joint Committee also recommends that the Board*

*seek legislative authority as necessary to define the “substantial relationship” criteria of those seeking a home improvement certification, and to extend the sunset date of the program.*

**Comments:** As written, Business and Professions Code section 480 allows all boards under the Department umbrella to deny a license to an individual who has committed a crime (or a bad act) substantially related to the qualifications, functions or duties of a licensee. The review process includes two parts. In the first, the threshold determination is made as to whether a crime is substantially related to the qualifications, duty and functions of a contractor licensee. In the second part, a determination is made as to whether the individual is sufficiently rehabilitated so that licensing is, nonetheless, appropriate.

In past years, the “substantial relationship” test was applied only to crimes that were specifically construction-related. This misinterpretation came from examples in the Board regulations which were unnecessarily restrictive and gave the wrong impression about how to apply the test. As a result of this restrictive view, an assault at a construction site was considered “substantially related” but an assault on the way home was not. Over the past year, the Board has spent considerable time addressing the relevance of criminal convictions to the qualifications, functions and duties of a licensed contractor. The Board has directed its staff to revise the regulation describing the “substantial relationship” criteria used in the present regulation. The test will be whether the crime is substantially related to the qualifications, functions and duties of a contractor, not merely to construction.

The Board’s staff is presently examining whether a criminal conviction history should be explored not just as part of the licensing process but as part of the decision to grant a home improvement certification. Homeowners contracting for home improvement work are the Board’s most vulnerable population. Under this proposal, there would be some crimes which might disqualify a licensee from getting a home improvement certification. For example, a registered sex offender might be licensed but never be certified. In addition, there might be violent crimes where “commercial” licensing might be appropriate long before home improvement certification is warranted. The Board indicates that this type of proposal should not be adopted merely through Board regulation, but would require a change in the laws governing Home Improvement Certification as well as assurance that the certification would not sunset as scheduled on January 1, 2004.

It should be noted that the Board itself has been somewhat hesitant to make changes in this area. The Joint Committee should seek clarification that the Board has, in fact, voted to change the current regulation regarding the “substantial relationship” criteria, and what specific direction was given to staff.

**ISSUE #13. (BROADEN DISCLOSURE POLICIES FOR LICENSED CONTRACTORS?)** The Board currently provides limited information on the status of licensed contractors, and consumers have complained about being misled or misinformed about either the status or background of the licensed contractor.

***Recommendation #13: The Joint Committee recommends that the Board convene public hearings to revisit its disclosure policy and report to the Joint Committee by September 1, 2001. In the meantime, the Board should clearly advise consumers that they are only providing limited information concerning the status and background of the contractor.***

**Comments:** The Board's current disclosure policy is governed by Board Rule 863, entitled Public Access to Information. This rule, which has been in place since 1992, provides for public disclosure of a complaint against a licensee that has been referred to legal action. In short, this policy allows complaints against contractors to be made public if the Board, through an investigation, has demonstrated a violation of contractors license law and has referred the case either to a DA or the Attorney General's office. Since this rule has been in place for seven years, the Board has established in its current strategic plan a goal of convening a number of public hearings early next year to revisit this disclosure policy to see if it needs to be updated. With the increase in the use of technology now available to provide consumers with instant access to information, the Board plans to ascertain whether its current disclosure policy is the one that best serves the public.

However, consumers have complained that they are misled by information provided by the Board concerning the status of a contractor's license. That the Board's statement that a licensee is in good standing is no guarantee that there aren't past civil or criminal judgments against the licensee, or that they have repeated complaints pending, or have been involved in prior arbitration proceedings, or stipulated or settlement agreements. They have indicated that the Board should clearly advise them that they are only providing limited information concerning the status and background of the contractor, or disclose all relevant information concerning the licensee so they can make informed decisions about hiring a contractor.

**ISSUE #14. (BOARD ADEQUATELY PURSUING VIOLATIONS OF LAW BY LICENSED CONTRACTORS?) It is still unclear whether the Board is focusing enough of its resources on violations of the Contractors' State License Law by licensed contractors when compared to its efforts to "eradicate" unlicensed contractors.**

***Recommendation #14: The Joint Committee recommends that the Board provide more detailed information on what actions it has taken against unlicensed contractors versus licensed contractors over the past four years. This should include budgetary information, as well as enforcement activity, and restitution provided to the consumer involving unlicensed versus licensed contractors.***

**Comments:** There has been some criticism leveled at the Board that they spend a disproportionate amount of time and resources going after unlicensed activity and not enough on dealing with violations of the Contractor's Act by licensed contractors when complaints are filed with the Board. The Board has responded by stating that it has made substantial progress in the "eradication of illegal, unlicensed contractors." The Board claims that enforcement activity in this area has resulted in the reduction of the number of consumers that file complaints with the Board alleging that they have fallen victim to an unlicensed contractor. In FY 1995/96, 5,100 consumers reported that they had been victimized by an unlicensed person as compared to approximately 3,500 in FY 1998/99. The Board seems to be indicating that it only spends 10% of its budget in pursuing unlicensed activity.



Even though the Board provided some evidence of its efforts involving unlicensed activity, it is still difficult to determine if the Board devotes adequate resources and enough effort to pursuing complaints filed against licensed contractors. (It should be noted that there are twice as many complaints involving licensed contractors.) For example, it is unknown why so few actions are initiated by the board (as compared to the public) for workmanship/abandonment by a contractor. (Are consumer complaints the only way the Board can initiate action for these violations?) Also, it is unknown what licenses have been revoked outright, rather than the Board placing the contractor on probation or receiving a default decision (simply letting the license go by default). The Board indicated in fiscal year 1998/99, there were 104 default decisions which account for most of the 182 license revocations within that year. Of the remaining number, most revocations were stayed and the licensee placed on probation. (All other boards which have been subject to sunset review have been able to provide the number of outright revocations of a license. They also publish those licensees whose license has been revoked.)

The Joint Committee should recognize that this is not a criticism of the Board's efforts in either of these areas at this time, it is simply a request for information and clarification of this issue by the Board. Some of this information was specifically requested by Committee members.

**ISSUE #15. (NEED TO IMPROVE REPORTING OF VIOLATIONS OF LAW BY LOCAL BUILDING OFFICIALS?)** Although the Board has been actively working with local building officials, and providing them with better assistance and information, there still has not been a significant increase in the reporting of violations of the Contractors' State License Law by local building officials.

***Recommendation #15:*** *The Joint Committee recommends that the Board continue its efforts to cooperate with local building departments and the California Building Officials leadership to provide better enforcement of building codes, and increased reporting of violations of the Contractors' State License Law.*

**Comments:** When the Joint Committee reviewed Board in 1996, it noted that of 30,000 complaints filed with Board, only 127 were filed by state or local agencies. The Joint Committee indicated that local building officials are considered to be in the best position to discover and report incompetent or unlicensed contractors. The Board believed that this lack of referred complaints is due in part to a lack of awareness on the part of the local agencies of laws pertaining to contractors. The Joint Committee recommended that the Board should implement a program to work more closely with local building officials and the State Buildings Standards Commission to provide ongoing training and information to building officials concerning potential violations of the Contractor's Act . It was intended that this program and effort by the Board would improve reporting of violations of the Contractor's Act.

The Board has accomplished this task. And although violations of the Contractors' State License Law have not increased as yet, it is anticipated that this effort and continued interaction with local building officials will improve enforcement efforts over time.

**ISSUE #16. (CHANGE COMPOSITION AND MEMBERSHIP OF THE BOARD?)**

**Should this Board be allowed to sunset and the current membership eliminated, and be reconstituted with a new membership that can provide true consumer representation and protection?**

***Recommendation #16:*** *The Joint Committee recommends that the current Board be allowed to sunset, and the Board be reconstituted as of July 1, 2001. The Joint Committee also recommends that a review of the newly reconstituted Board be conducted within two years. In the meantime, the Legislature should consider how the new board membership should be recomposed so as to assure adequate consumer representation and protection. It should assure that all public members of the new Board are truly public members, and that they are not: (1) current or past licensees of the Board, (2) a family member of a licensee, (3) formerly connected with the construction industry, or (4) have any financial interest in the business of a licensee of the Board, and that they meet all of the other requirements for public membership pursuant to the Business and Professions Code. The composition of the new Board should continue to be a simple public majority.*

**Comments:** There has been a dissatisfaction with the efforts of this Board by members of the Joint Committee and Department to address major issues involving protection of consumers, and concern about whether this Board will adequately deal with these matters in the future. Some of the more specific problems with this Board include:

- A lack of response to consumer complaints which involve licensed contractors.
- Excessive delay in investigations and inconsistent procedures and policies regarding investigations, especially if a civil action is pursued by a homeowner against a contractor.
- An inability of the Board to identify inadequacies in existing law and offer recommendations for dealing with home equity lending scams by contractors and salespersons.
- Rejection by the Board of any changes necessary to improve restitution provided to homeowners when they suffer financial injury as a result of a contractor.
- Concern about the direction the Board is taking in closing down field offices, and whether these changes will improve complaint handling and investigation of cases, and what impact this will have on consumer access to Board staff.
- Lack of response by the Board to updating their contractor examinations and reviewing their waiver process.
- Misleading the public about the status and background of a contractor.

Members of the Joint Committee have also raised concerns about the appointment and make-up of the public membership of the Board. That in some instances past public members may have been in some capacity connected to the construction industry. There is also some concern that one of the public members is a local building official and that they could be a licensee of the Board. (Although the current local building official public member is not.)